

APPELLATE COURT NO. 71595
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
AT AUSTIN

RICK ALLAN RHOADES,

Appellant

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 179TH DISTRICT COURT OF HARRIS COUNTY,
TEXAS

Judge J. Michael Wilkinson Presiding

STATEMENT OF FACTS

VOLUME XXX OF 40 VOLUMES

Marlene Swope
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS

MAR 5 1993

Thomas Lowe, Clerk

644

1 If there is nothing else, please go in
2 a group back to the jury room and we will take
3 you down.

4 MS. DAVIES: Our last witness, now
5 that he has been testified, can he stay in the
6 courtroom?

7 MR. STAFFORD: No objection.
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18
19
20
21
22
23
24
25

1	INDEX	
2	VOLUME XXX	
3		<u>Page</u>
4	LARRY HOFFMASTER	
	Direct	648
5	Cross	684
	Redirect	695
6	Recross	697
7	STATE RESTS	701
8	STEWART H. KENNEDY	
	Cross	702
9	Redirect	748
	Recross	756
10	FLOYD McDONALD	
11	Direct	761
	Cross	776
12	DEFENSE RESTS	789
13	DAVID SANDERS	
14	Redirect	791
	Cross	800
15	Objections to Court's Charge	803
16	Opening argument of the State	808
17	Opening argument of the Defense	825
18	Closing argument of the Defense	839
19	Closing argument of the State	848
20		
21		
22		
23		
24		
25		

ALPHABETICAL INDEX

VOLUME XXX

	<u>Page</u>
HOFFMASTER, LARRY	
Direct	648
Cross	684
Redirect	695
Recross	697
KENNEDY, STEWART H.	
Cross	702
Redirect	748
Recross	756
MCDONALD, FLOYD	
Direct	761
Cross	776
SANDERS, DAVID	
Redirect	791
Cross	800

1 CAUSE NO. 612408

2 STATE OF TEXAS IN THE 179TH DISTRICT COURT

3 VS. OF

4 RICK ALLAN RHOADES HARRIS COUNTY, T E X A S

5
6 A P P E A R A N C E S:

7 For the State: Ms. Carol Davies
8 Ms. Claire Connors
Assistant District Attorneys
Harris County, Texas

9 For the Defendant: Mr. James Stafford
10 Ms. Deborah Kaiser
Attorneys at Law
11 Houston, Texas

12
13 BE IT REMEMBERED that upon this the
14 1st day of October A.D. 1992, The above entitled
15 and numbered cause came on for continued trial
16 before the Honorable J. Michael Wilkinson, Judge
17 of the 179th District Court of Harris County,
18 Texas, and a jury; and the State appearing by
19 counsel and the Defendant appearing in person
20 and by counsel, the following proceedings were
21 had, viz:

1 THE COURT: Mr. Stafford.

2 MR. STAFFORD: For purposes of the
3 record, it's my understanding that the State's
4 next witness is going to be Sergeant Hoffmaster,
5 who is a purported expert in blood spatter. I
6 am contending under Frye vs. United States and
7 under the rules of criminal evidence that blood
8 spatter testimony is not readily acceptable by
9 the scientific community. It's susceptible to
10 various and many interpretations. Since it's my
11 understanding, this fine sergeant did not make
12 the scene, his calculations are strictly from
13 pictures that have been blown up to make
14 predictions on hypothets presented to him.
15 Based upon the fact that this type testimony is
16 not accepted by the scientific community, I
17 would ask the court to prevent this witness from
18 testifying.

19 MS. DAVIES: Your Honor, it's not
20 scientific expertise. It does not fall into the
21 arena of scientific testing at all. It's a type
22 of information and opinion based on a
23 specialized training and interpretation and
24 opinion. But certainly it's not the kind of
25 thing that would be a scientific test.

1 THE COURT: Your objection is overruled.

2 MS. CONNORS: Monday counsel from the
3 parole board turned over to the court some
4 parole records. The court reviewed the
5 records. On Tuesday evening at approximately
6 seven o'clock, the judge gave the parole
7 records--

8 THE COURT: Actually I reviewed them
9 Monday and Tuesday. On Tuesday afternoon, at
10 the time we broke, I turned them over.

11 MS. CONNORS: Which is close to six
12 o'clock in the evening. This court ordered the
13 State to make a copy for defense counsel and
14 give them to defense counsel. We have done
15 that. At approximately ten o'clock this
16 morning, which is October 1st, I gave Mr.
17 Stafford the parole records.

18 THE COURT: All right.

19 MR. STAFFORD: I still object to the
20 court giving that to the State.

21 THE COURT: Get the jury.

22 (Jury enters the courtroom)

23 THE COURT: This witness has
24 previously been sworn. Please be seated.

25 Proceed, please.

1 LARRY HOFFMASTER

2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. DAVIES:

6 Q. Would you, please, tell us your name?

7 A. Larry Hoffmaster.

8 Q. How are you employed?

9 A. Houston Police Department homicide
10 division.

11 Q. How long have you been in law
12 enforcement?

13 A. Twenty-one years.

14 Q. You say you are in the homicide
15 division. How long have you been there?

16 A. Fifteen years.

17 Q. During your years of experience as a
18 police officer, have you had few or many
19 occasions to be at and investigate homicide
20 scenes?

21 A. Many occasions.

22 Q. On those occasions, many instances,
23 was there bloodstain evidence at the scene in
24 the form of blood that had been left behind?

25 A. Yes, there was.

1 Q. Have you had any specialized training
2 to enhance your ability in law enforcement?

3 A. Yes, I have.

4 Q. Tell the jury about some of the
5 special training you have had.

6 A. I have had training in bloodstain
7 interpretation, crime scene reconstruction. Did
8 you want me to list those?

9 Q. Any special training you have had and
10 give us an idea where you received that
11 training.

12 A. In 1985, I received a course in
13 bloodstain interpretation in Dallas, Texas; in
14 1987, an advanced bloodstain interpretation
15 course in Corning, New York; 1988, bloodstain
16 interpretation at the Houston Police Academy;
17 1992, I went to an advanced bloodstain seminar
18 in Colorado Springs.

19 Q. So, those special schools just related
20 to bloodstain interpretation?

21 A. Yes.

22 Q. I assume, through the years, you have
23 gone to other training sessions in other areas?

24 A. Yes, unrelated to this.

25 Q. Did you develop any special interest

1 in the interpretation of bloodstain?

2 A. Yes, I did.

3 Q. Is that why you happened to have gone
4 to a number of these seminars?

5 A. Yes.

6 Q. Have you been involved in teaching at all?

7 A. Yes.

8 Q. Tell us about that, if you would.

9 A. I teach some bloodstain interpretation
10 for Houston Community College. I have taught
11 for Brazoria County Regional Law Enforcement,
12 Pasadena Police Department, Houston Police
13 Academy. I am a member of the International
14 Association of Bloodstain Pattern Analysts, and
15 I am sometimes called as an expert witness by
16 the Harris County District Attorney's Office.

17 Q. Were you involved initially in the
18 investigation of the Allen brothers' murder at
19 624 Keith on September 13 of 1991?

20 A. No, I was not.

21 Q. Did you actually go out to the scene
22 there while the evidence at the scene was still
23 intact?

24 A. No, I did not.

25 Q. At some later point, did you look over

1 the evidence in this case at my request?

2 A. Yes, I did.

3 Q. Can you tell the jury, since you were
4 not at the scene, what efforts did you make to
5 familiarize yourself with the evidence in the case?

6 A. I read the scene description and the
7 defendant's statement from the offense report.
8 I viewed the 35 millimeter photographs and the
9 video tape and talked with the medical examiner.

10 Q. Did you talk to any of the individuals
11 who were at the scene?

12 A. Yes, I did.

13 Q. For example, Jim Bolding?

14 A. I talked with Jim Bolding, and I also
15 talked to the two scene detectives.

16 Q. When you are asked to look at evidence
17 and see if you might have some opinions as to
18 interpretation of bloodstain patterns, ideally
19 would you want to have gone to the scene?

20 A. Yes, that would be the ideal situation.

21 Q. The fact that you were not at the
22 scene, after reviewing all of the pictures, the
23 video and the reports, did you feel that you
24 were able to reach some conclusion even though
25 you were not there in person?

1 A. Yes, I can definitely tell a lot from
2 those things. I may have told a little more if
3 I had been able to go to the crime scene, but I
4 was able to make some determinationss from the
5 evidence I was shown.

6 Q. Now, we have a number of photographs
7 and video tape in evidence. Did you take steps
8 to have some other visual aids made to assist you?

9 A. Yes, I had made some slides of still
10 photographs and a couple from the video that
11 made specific points that I wanted to show the jury.

12 Q. So you had slides made from 35
13 millimeter film and from the video film?

14 A. Yes.

15 Q. Any particular reason that you prefer
16 to have some slides available, sergeant?

17 A. They are easier for the jury to see.
18 If you and I are talking about that picture and
19 I am pointing to things, they can't see what I
20 am talking about.

21 Q. Let me show you a group of photographs
22 here that have been previously identified in
23 court, State's Exhibits 89 through one hundred,
24 all of which are photographs that were taken at
25 the morgue of Charles and Brad Allen prior to

1 the autopsy. Would you look through those and
2 see if there are any particular ones that you
3 felt were of significance and assistance to you
4 in your analysis?

5 A. Yes, 89 and 90.

6 Q. 89 and 90. Did you assist me in
7 setting up a projector and carousel here earlier
8 for the slides that you had made?

9 A. Yes, I did.

10 Q. Did you review the slides at that time
11 that are contained in the carousel that was
12 marked State's Exhibit 141?

13 A. Yes.

14 Q. And the slides contained in that
15 carousel, did you review them? They are marked
16 141-A through P.

17 A. Yes.

18 Q. Are each of these slides accurate
19 reproductions of film, either 35 millimeter or
20 scenes from the video, that you reviewed?

21 A. Yes.

22 Q. In fact, did you show the slides 141-A
23 through P to defense counsel for me also?

24 A. Yes, I did.

25 MS. DAVIES: Your Honor, at this time

1 I am tendering the slides 141-A through P as
2 well as State's Exhibits 89 and 90.

3 THE COURT: Tell me the slide
4 identifying marks again.

5 MS. DAVIES: 141-A through P, sixteen
6 slides.

7 MR. STAFFORD: As far as 141 is
8 concerned, I renew my previous objection I made
9 outside the presence of the jury as to the
10 slides in reference to his testimony. Other
11 than that, I have no objection.

12 THE COURT: Were 89 and 90 previously
13 admitted?

14 MS. DAVIES: They have not been
15 offered. They were previously identified, and
16 this is the first offer.

17 THE COURT: State's Exhibits 89 and 90
18 are admitted, as are State's Exhibits 141-A
19 through P.

20 BY MS. DAVIES:

21 Q. Sergeant Hoffmaster, before we start
22 explaining from the pictures, would you give us
23 a little information to assist us in
24 understanding, a little information about the
25 field of blood spatter interpretation.

1 Basically what is it?

2 A. Bloodstain interpretation is simply
3 learning how blood reacts when certain things
4 happen to it, learning the various patterns it
5 produces and then being able to compare those to
6 the spatters at the crime scene, and it tells
7 you what took place at that location.

8 Q. Are there any terms that you use,
9 vocabulary in bloodstain interpretation?

10 A. Yes, there are several. There are
11 three basic types, low, medium and high
12 velocity.

13 Q. Stop just a minute. Velocity. Low
14 medium and high velocity?

15 A. Yes. That describes the impact, the
16 speed of the impact on the blood. In a high
17 velocity, that would be consistent with a
18 gunshot, where the velocity of the bullet
19 hitting the blood would break it up into a fine
20 mist.

21 Q. You expect to see a pattern that looks
22 like a fine mist?

23 A. Yes.

24 Q. On a surface that is adjacent?

25 A. Yes, it could be on a wall or on

1 clothing or something of that nature.

2 Q. And what is medium velocity?

3 A. Medium velocity is a little larger,
4 and it's caused by beating. And when I say
5 beating I include stabbing in that. Either a
6 beating with an object or a stabbing. In both
7 cases, it breaks up the blood into medium
8 velocity spatters. That is a little larger. To
9 give you an example that you could picture in
10 your mind, say between the size of the head of a
11 pin and maybe a pencil eraser.

12 Q. Now, if I am understanding you
13 correctly, you would expect to see the same type
14 and size spatter, medium velocity, whether it
15 was the result of someone being beat?

16 A. Yes.

17 Q. With a blunt object?

18 A. Yes.

19 Q. Or the same type pattern would be the
20 result of a stabbing; is that correct?

21 A. That is correct. In the beating, the
22 blunt object is breaking up the blood. In a
23 stabbing, the hand and the hilt of the knife are
24 doing the same thing that the blunt object does.

25 Q. You also mentioned low velocity. What

1 is that?

2 A. Low velocity is just blood that drips
3 as a result of gravity. When the blood drop
4 becomes large enough that gravity overcomes the
5 surface tension, then it drops to the floor.
6 That is usually about the size of a dime or
7 slightly smaller.

8 Q. Now, would the size be a result in
9 some cases of the amount of bleeding that is
10 going on, or do you expect it to be of that size
11 -- I mean, does it make a difference if
12 somebody is bleeding profusely or just a little
13 bit?

14 A. Well, yes, it would because you would
15 be having a lot of drops coming off if they are
16 bleeding profusely, it would be all together, or
17 maybe you just couldn't tell, it would be so
18 much.

19 Q. In laymen's terms, it would be like a
20 pool of blood?

21 A. Yes.

22 Q. There are so many drops that they are
23 going to combine and make a larger area?

24 A. Yes.

25 Q. Is there anything significant about

1 the shape of the drops that you see when you are
2 looking at your low velocity?

3 A. The shapes? Well, the shape is
4 generally determined by the surface that it
5 strikes. Unless, if you are talking about
6 directionality, sometimes if a person is moving
7 you can tell directionality, the direction they
8 are going by the -- there is a spined edge on
9 the side that they are traveling in.

10 Q. You say the surface that it strikes
11 would be significant. Are you going to get a
12 more precise pattern if it's a smooth surface?

13 A. Well, on a slick surface you get a
14 perfectly round drop. If it hits a rough
15 surface then it breaks up with spines and uneven
16 circles.

17 Q. The term transfer, what significance
18 does that have?

19 A. A transfer is simply just having blood
20 on one object, touching it to another object and
21 transferring the blood.

22 Q. Again, in laymen's terms, might it be
23 the kind of thing that one would refer to as a
24 smear? In other words, if I had blood on my
25 hand and touched it on the table as opposed to a

1 cut hand and let the blood just drip? If I am
2 cut and the blood drips, you are going to see
3 what kind of pattern?

4 A. Low velocity.

5 Q. Just your round?

6 A. Basically round drops.

7 Q. As opposed to if I had cut myself and
8 I touched the table?

9 A. If your hand was covered with blood
10 either from cutting yourself or touching
11 somebody else that was covered with blood and
12 you touched the table, then that would be a
13 transfer.

14 Q. When you go to a crime scene and it is
15 a situation where it's a stabbing, is there
16 anything that you commonly look for?

17 A. Yes, there is.

18 Q. What is that?

19 A. I look for the low velocity drops that
20 we discussed just now, the round drops. A trail
21 of them through the house.

22 Q. Why is that?

23 A. It's very, very common for, in a
24 stabbing, the knife slips in someone's hand or
25 they are fighting over the knife, the defendant

1 often gets cut during the struggle. It's
2 common. I look for it at every crime scene I
3 go to because if that occurs and I recognize
4 that then I can take or get the lab people to
5 take samples of that blood, and then I have that
6 for DNA comparison.

7 Q. Is there any other term that you think
8 would be of assistance to us in understanding
9 your analysis?

10 A. Yes, there is one I can think of right
11 off, and that is arterial spurting.

12 Q. What is that?

13 A. Arterial spurting occurs when an
14 artery is breached through a stabbing or some
15 type of wound and the blood spurts out with the
16 beating of the heart and it causes a specific
17 pattern on the wall that we will see in just a
18 minute.

19 Q. Is it a distinctive pattern?

20 A. Yes.

21 Q. Would you expect to see a different
22 evidence of bleeding at the scene as a result of
23 the situation where an artery had been cut as
24 opposed to, say, if somebody had been hit in the
25 face and maybe their nose was bleeding?

1 A. Yes, that would be different.

2 Q. Why is that?

3 A. Arterial spurting produces a different
4 pattern than if someone's nose was bleeding.
5 You might have some medium velocity spatter if
6 they are struck again after the nose started
7 bleeding, or you may just have some low velocity
8 dripped blood on the floor.

9 Q. You said if they were struck again.
10 Did I understand you to say if someone was
11 struck in the face and they were bleeding you
12 might expect to see medium velocity spatter if
13 they were struck again?

14 A. Yes. Normally it takes at least two
15 blows before you get spatter. The first blow
16 draws the blood, and the second blow would, once
17 that blood has pooled and you strike in that
18 blood again in the same area, it breaks it up
19 into the medium velocity spatter that we talked
20 about.

21 Q. Is that true of both stab wounds and
22 beating type injuries?

23 A. Yes.

24 Q. Ordinarily it would take two blows
25 before you would begin to see spatter?

1 A. At least two, yes.

2 Q. Is that to say you would never get any
3 spatter of any kind from just a single blow?

4 A. No, occasionally with a heavy
5 instrument you can get spatter on the first blow.

6 Q. When you talk about this medium
7 velocity spatter as a result of beating, am I
8 understanding is that blood that is spraying --
9 if I am using the wrong term, tell me -- but is
10 that like blood that is spraying from the victim
11 as blood has been drawn, or might it be from the
12 weapon that is being used?

13 A. If I understand that correctly.

14 MR. STAFFORD: I didn't, judge. Could
15 she restate it?

16 THE COURT: I didn't hear it. What
17 was the question?

18 BY MS. DAVIES:

19 Q. When you talk about blood spatter, the
20 medium velocity blood spatter pattern, the kind
21 of thing that is the result of beating or
22 stabbing, are you telling us that that is blood
23 that is spraying from the body of the victim, or
24 might blood come from the weapon as it's in use?

25 A. Medium velocity spatter is, once you

1 have opened a wound and you have blood, it
2 starts bleeding, and you strike back in that
3 place again, it breaks the blood up and it
4 spatters on surrounding things, whatever.

5 Q. Is there any -- I've heard the term
6 cast-off. What is that?

7 A. Cast-off is the second thing you were
8 describing. If you have a weapon and you are
9 striking back in a pool of blood, the blood gets
10 on the weapon. When you raise it back and bring
11 it forward, sometimes it produces a cast-off
12 pattern on the wall or the ceiling behind you,
13 or in front of you, too.

14 Q. In other words, that is actually blood
15 that has gotten onto the weapon and then is
16 going from the weapon when it's brought back to
17 the surface where you see the stain?

18 A. That is correct.

19 Q. Is there anything distinctive about
20 the pattern or shape of that type of stain?

21 A. Yes, it looks differently than other
22 stains.

23 Q. Is that something that is based on
24 your experience and training you have that you
25 can attempt to distinguish?

1 A. Yes.

2 Q. Sergeant Hoffmaster, would it assist
3 you -- what would be the best way to explain to
4 the jury your conclusions? Would it assist you
5 to show these slides first and point out what
6 you consider significant?

7 A. Yes.

8 MS. DAVIES: Your Honor, may I ask
9 that we be allowed to show these slides?

10 THE COURT: All right.

11 BY MS. DAVIES:

12 Q. I didn't ask you. You did not go to
13 the crime scene while the evidence was intact.
14 At some point did you go to 624 Keith to
15 personally see the layout and familiarize
16 yourself with the location where these
17 photographs were taken?

18 A. Yes, I did. I went there so I could
19 compare the photographs to the scene and see the
20 layout of the house in my mind.

21 Q. Are you ready?

22 A. Yes.

23 Q. Can you tell us what you were able to
24 see in this slide that was helpful or
25 significant to you?

1 A. Well, there were several things that
2 were significant in this slide. Many times in
3 bloodstain interpretation or crime scene
4 reconstruction what is not present is as
5 important as what is. In this slide you can
6 see that there is a lack of the dripped blood,
7 the low velocity dripped blood in this area next
8 to the bed. It's important to note that this
9 foot is out. The other half of the body is
10 covered with this cover. And then we have
11 something we forgot to discuss here, hair
12 transfers on this pillow. That is just simply
13 having blood on your hair and transferring that
14 to some object.

15 Q. Is that similar, you described
16 transfer, we talked in terms of the hand. Is
17 it basically a transfer but you are just talking
18 about hair that is soaked with blood?

19 A. Yes. You see it here on the first
20 pillow, then it moves across to the second
21 one. Has some on the third and then. Those
22 are I think the three basic things that are
23 important in those slides. The lack of blood
24 here, the foot being out from under the cover.
25 Actually the full leg is out from under the

1 cover. And the stains going across the pillow.

2 Q. All right.

3 A. In this photograph we can see what we
4 talked about awhile ago, the medium velocity
5 spatter. It's a little hard to see, but you
6 can see it here in this area. Here. Here.
7 There are several drops up in this area and on
8 this music stand next to the bed. Those are
9 consistent with the beating that occurred
10 there. It tells us that the beating did occur
11 there.

12 Q. All right. Now, you have pointed out
13 some spots that are difficult to see there on
14 the wall. And what about, is there an
15 electrical outlet there?

16 A. Yes, right here. There is a spatter
17 on that also.

18 Q. As well as on the music stand?

19 A. There is some on the phone, here on
20 the music stand, the wall here, here, here and
21 up in this area. I suspect there is a great
22 deal more; we just can't see it in these
23 photographs.

24 Q. What about there is a white portion of
25 the pillow sticking out. How would you describe

1 that?

2 A. There is some type of transfer stain
3 there, and I wasn't able to make a determination
4 of what caused that.

5 Q. Can you tell anything, from the
6 spatter that you pointed out to us, can you tell
7 anything about direction, given the quality of
8 the pictures that you have?

9 A. --.

10 MR. STAFFORD: I didn't hear the
11 answer, Judge.

12 THE COURT: It hasn't been given yet.

13 A. No. I couldn't really make any
14 determination on that.

15 Q. Try to keep your voice up.

16 A. This is a morgue photograph of the
17 complainant that we just saw, Charles; and we
18 talked about the fact that the one leg was out
19 from under the covers and the other leg was
20 still under the cover. You notice the lack of
21 blood on this leg and the blood present on the
22 right leg. And also see it on his right foot.
23 This is some of the medium velocity spatter that
24 we talked about present on his right foot. All
25 those things together, the lack of blood beside

1 the bed, the hair transfers on the pillow going
2 across the bed, the medium velocity spatter on
3 the wall and the headboard and the music stand
4 around the bed all points to the attack
5 occurring in that bed.

6 Q. Now, Sergeant Hoffmaster, the drop,
7 the medium velocity spatter drops on Charles'
8 foot there, can you tell us, I mean, is that an
9 indication that he was standing upright at some
10 point and that blood was dripping from him, or
11 could it have been dripping from another, from
12 his attacker? Can you tell anything about how
13 that spatter?

14 A. This spatter would be from the
15 beating. It appears that it occurred there in
16 the bed because of the lack of spatter on the
17 left leg. Very high probability that if he were
18 standing and was being beaten he would have
19 spatter on both feet. Also there may have been
20 spatter present somewhere in the house if that
21 had occurred.

22 Q. So, if he was in an upright position
23 when he was bleeding from the injury that you
24 saw on his head, you would expect to see
25 evidence of that in terms of blood on both of

1 his legs, not just the one that was sticking out
2 from under the cover?

3 A. If he were standing up being beaten,
4 yes.

5 Q. Did it appear to you that that left
6 leg had ever been out from under the bed
7 covering that we saw?

8 A. No. There was no blood present
9 anywhere on that leg or that foot that I could
10 observe.

11 Q. What is this?

12 A. This is the wall just inside Charles'
13 room, the bedroom, the door leading into his
14 bedroom.

15 Q. Is this one of the slides you had made
16 from the video?

17 A. Yes. That is why it appears
18 differently. This type of pattern is the
19 arterial spurting that we talked about where an
20 artery is breached, and there is also some
21 medium velocity spatter in this area.

22 Q. So you have a combination of two
23 patterns there; is that right?

24 A. Yes.

25 Q. Medium velocity as well as the

1 arterial spurting?

2 A. Yes.

3 Q. When you said arterial spurting, is
4 that the larger spots with the trail going
5 down?

6 A. These patterns, these and these.
7 What happens, this part of it is just what
8 gravity has overcome and is just running down
9 the body, was large enough that it's running
10 down. As I said, this is consistent with an
11 artery being breached, is consistent with the
12 wounds that Bradley had. And it appears that he
13 may have entered the room and was attacked at
14 this point and received wounds that would cause
15 arterial spurting.

16 Q. Did there, based on your experience
17 and training, did there appear to be any wounds
18 on Charles that would have caused that pattern
19 of bloodstain?

20 A. Yes. I talked with Doctor Espinola,
21 and he did have wounds on his left arm that
22 would be consistent with this type stain.

23 Q. That is Brad?

24 A. Brad, yes.

25 Q. Now, Charles, the other brother, the

1 one you just showed us the slide of.

2 A. Did Charles have those? According to
3 Doctor Espinola, he did not.

4 MR. STAFFORD: I object to what the
5 doctor told him, judge. That would be hearsay.

6 THE COURT: Sustained.

7 MR. STAFFORD: They had an opportunity
8 to ask the doctor that when they had him here
9 and failed to do it. Ask the jury be
10 instructed to disregard the last statement.

11 THE COURT: I sustained your original
12 objection.

13 MR. STAFFORD: I ask the jury to
14 disregard the last statement.

15 THE COURT: Disregard the last
16 response of the witness, ladies and gentlemen.

17 MS. DAVIES: I object to the sidebar.

18 THE COURT: Sustained.

19 MR. STAFFORD: I ask for a mistrial at
20 this time.

21 THE COURT: Denied.

22 BY MS. DAVIES:

23 Q. Is that the main significance of that
24 slide, sergeant?

25 A. Yes.

1 Q. All right.

2 A. This area is the wall in the hallway
3 on the -- it would be the west side going from
4 Charles' room down this area, back down the hall
5 to Bradley's room. We have the same type of
6 pattern, arterial spurting going down the wall
7 back to that room.

8 Q. Now, can you tell anything about the
9 direction when you look at that type?

10 A. Yes, it's traveling back in this
11 direction. It's usually angled in the
12 direction that it's traveling in.

13 Q. So does that tell you anything about
14 the direction that the person who was bleeding
15 was going?

16 A. Yes. The person was going from
17 Charles' room toward Bradley's room.

18 Q. This would be a person who had had an
19 artery severed?

20 A. Right.

21 Q. What do we have here?

22 A. This is the doorway outside of
23 Bradley's room. You see a great deal of the
24 arterial spurting in this area. He apparently
25 paused in this area for sometime.

1 Q. Why do you say that?

2 A. Because of the concentration in this area.

3 Q. All right.

4 A. And there is some what appears to be
5 medium velocity spatter mixed in with that as if
6 the attack may have continued here.

7 Q. So, the arterial spurting, if I am
8 understanding you correctly, would come from a
9 wound where an artery had been severed, the
10 additional medium velocity spatter might
11 conceivably come from other stab wounds or
12 beating type wounds being inflicted; is that
13 correct?

14 A. Yes, that is correct.

15 Q. Is there any transfer type blood here?

16 A. Yes, there is one here.

17 This just depicts the location that
18 Bradley came to rest in his room.

19 Q. There on the doorfacing, what is that
20 pattern? Is that where the arterial spurting is?

21 A. Yes, that is part of what we just saw
22 going into the room.

23 Q. What about on the spread there, there
24 is a white, looks like the spread has white lining?

25 A. Which area? Here?

1 Q. Right.

2 A. I can't really make a determination on
3 that.

4 Q. As to?

5 A. There is so much going on in this
6 room, I can't separate that out.

7 Q. In terms of direction -- what do you
8 mean there is so much going on in the room?

9 A. Well, there are, let's see, I think
10 three or four locations where things are
11 occurring in this room.

12 Q. How would you characterize the stains
13 that you see on the sheet?

14 A. They are transfer stains from some
15 part of their body touching this sheet with
16 blood on it.

17 This is another view of it from inside
18 the room. The locations I was talking about are
19 here, here, here and here. At some point,
20 Bradley appeared to be over here.

21 Q. Why do you say that?

22 A. There are two right hand transfers in
23 this area here. And we have the arterial
24 spurting appearing in here on this wall.

25 Q. So, at some point, it appears he is up

1 against the wall. That stain you are saying is
2 the right hand kind of smeared on the wall?

3 A. Yes.

4 Q. As well as arterial spurting?

5 A. Yes. I can't say whose right hand,
6 but there is a right hand impression on the
7 wall, and then there is arterial spurting next
8 to it.

9 Q. Apparently it was a right hand that
10 was covered with blood?

11 A. Yes.

12 Q. What about on the door?

13 A. This is a transfer pattern from his
14 body being against the door. This lower half is
15 just where the volume of blood was great enough
16 that it ran down.

17 Q. That is not arterial spurting pattern?

18 A. No.

19 Q. What you see there, is that
20 consistent, given the size and location of the
21 wounds and the blood, consistent with Brad
22 leaning up against that door with his shoulder
23 as if to hold it closed?

24 A. Yes, it is.

25 Q. Anything else significant?

1 A. Here on the bed we have a large area
2 of soaked blood where Bradley was apparently on
3 the bed at some point. And then this last one,
4 there is a transfer pattern right here and more
5 arterial spurting here next to where he came to
6 rest.

7 Q. What does this show you?

8 A. This is the area across the room next
9 to that black piece of furniture where we saw
10 the hand impression on the wall and the arterial
11 spurting. That is just a close-up of it.

12 Q. So we are seeing arterial spurting on
13 that wall and then.

14 A. That right hand impression was up in
15 this area.

16 Q. All right. There is clothing and
17 carpet there. How would you characterize -- on
18 the socks and jeans, you can see blood
19 spatters. How would you characterize that?

20 A. I can't really make a determination.
21 It could be from arterial spurting; it could be
22 from medium velocity. The way it is there -- I
23 can't recognize everything there. I can only
24 tell you of the things I do recognize.

25 Q. Okay. The fact that it's fabric and

1 obviously is ruffled up, is not a smooth
2 surface, does that have an effect on what you
3 are able to determine?

4 A. Yes.

5 Q. Is the same true of the carpet area?

6 A. Yes. You can see some transfer
7 patterns in this area, but they are not clear as
8 to what they are.

9 And this is just a close-up of the
10 bedspread, the soaked areas where he was
11 obviously on the bed for sometime. And the
12 knife.

13 Q. I notice way up in the right-hand
14 corner practically over to the other side of the
15 bed there appears to be -- is that a transfer
16 stain, or can you tell?

17 A. It looks just like a soaked area.
18 Some more of this, only it looks a little
19 different on the bed.

20 Q. What does this show?

21 A. That is just a close-up of that
22 bedspread, soaked areas.

23 These are the footprints that lead
24 into the kitchen. And here is the low velocity
25 drops that we talked about, the drops that

1 dropped from a wound.

2 This is a better shot of those. You
3 can see how round they are.

4 Q. When you look at the -- looks like I
5 see there is some that appear to have little --
6 they aren't quite perfectly round, while others
7 are more round, is that of any significance?

8 A. Are you talking about like for
9 directionality?

10 Q. Yeah, I mean, can you tell whether the
11 person is moving or standing still or, I mean,
12 obviously, from the footprints, somebody is
13 moving, but whether they are running? Is there
14 anything about the shape of those drops that is
15 significant?

16 A. The person dropping this would have
17 been either standing or moving slowly. If they
18 were moving fast, it would have a spined edge on
19 one side in the direction they were moving.

20 Q. Thank you.

21 A. Here you can see in front of the sink
22 the same low velocity blood drops. This is
23 also common when someone has a wound at a crime
24 scene, they go to the sink and try to wash up.

25 This is the knife drawer. Bloody

1 finger impressions around the edge of it.

2 Q. Is that transfer? In other words,
3 somebody, would appear a bloody hand opened that
4 drawer?

5 A. Yes. Here you can see a low velocity
6 drop of blood also.

7 Now, this one does have scalloped
8 edges. It doesn't necessarily mean it was
9 moving in this case. It may be the surface
10 here that broke that up.

11 That is all of them.

12 Q. Sergeant, did you look at the complete
13 set of photographs -- I know you had sixteen
14 slides made up. Did you look at all the
15 photographs?

16 A. Yes, I did.

17 Q. Based on your observations, can you
18 tell us whether you formed an opinion as to
19 where the attack or assault on Charles Allen,
20 the young man in the back bedroom, occurred?

21 A. All the evidence--.

22 MR. STAFFORD: Your Honor, I object to
23 that. One is that he only had photographs. He
24 was never at the scene, never got to see the
25 whole scene to make an accurate prediction of

1 this. I think this invades the province of the
2 jury. This is totally speculation on his
3 behalf, and I object to this type of testimony
4 and predictions.

5 THE COURT: It's overruled.

6 BY MS. DAVIES:

7 Q. Sergeant, did you form an opinion
8 where -- I am talking about Charles, the young
9 man in the back bedroom -- in fact, have you had
10 a chance to see this diagram? You said you
11 walked through the house?

12 A. Yes.

13 Q. I am talking about Charles in the back
14 bedroom. Did you form an opinion, based on your
15 training and your observation of the photographs
16 in evidence, did you form an opinion as to where
17 the attack on Charles most likely began?

18 A. Yes.

19 Q. What is your opinion?

20 A. It appears from the evidence that it
21 occurred there in the bed, began there in the
22 bed.

23 Q. Did you see any evidence to indicate
24 -- did it appear that Charles ever actually got
25 out of that bed?

1 A. No, I did not. I didn't see anything
2 that was consistent with that.

3 Q. Based on your analysis and
4 interpretation of the evidence, did you form an
5 opinion as to where the attack on Bradley, the
6 young man who was crouched at the door of the
7 front bedroom, where the attack on him began?

8 A. Yes. I believe it began just inside
9 the door to Charles' room where we saw the
10 arterial spurting on the wall.

11 Q. Based on the arterial spurting pattern
12 that you saw in the pictures on both sides of
13 the wall in that hallway, did it appear that
14 that was consistent with Bradley running, moving
15 and fighting after he had first been cut, had an
16 artery cut?

17 A. --.

18 Q. Did I put too much in the question?

19 A. I think so. I can say that it's
20 consistent with Bradley receiving wounds in that
21 location that would cause arterial spurting and
22 then moving back down the hall to his room,
23 pausing there in front of the door and then
24 moving inside.

25 Q. Did it appear that there was -- you

1 said paused by the door. Given the additional
2 blood spattering at that location and inside his
3 room, did it appear to you, based on the
4 evidence, that there was additional stabs or
5 wounds inflicted on Bradley after he got to his
6 room?

7 A. Are you saying inside the room?

8 Q. Yes.

9 A. Yes, it appears that the attack
10 continued inside the room.

11 MS. DAVIES: Pass the witness.

12 MR. STAFFORD: I ask for a continuance
13 at this time for a short moment.

14 THE COURT: Approach the bench.

15 (Off the record bench conference)

16 THE COURT: Ladies and gentlemen, if
17 you would, please, go to the jury room for a
18 moment.

19 (The jury is removed from the
20 courtroom).

21 MS. DAVIES: Your Honor, I understand
22 -- I don't know if this even needs to be on the
23 record -- but I am curious as to how we avoid a
24 violation of the rule.

25 THE COURT: That is what I want him to

1 tell me.

2 MR. STAFFORD: A violation of the rule
3 means I can't go talk to my client. I mean,
4 talk to my witness.

5 THE COURT: About what this witness
6 said?

7 MR. STAFFORD: For purpose of
8 cross-examination, it would be expert to expert.
9 I am not an expert in this. Never proclaimed to
10 be an expert. This witness was again I am
11 contending called on me in surprise.

12 THE COURT: I will give you five
13 minutes to talk to your witness in preparation.

14 MR. STAFFORD: Can we put a phone call
15 in now for Doctor Espinola and ask him to come
16 back? I want him to see these slides. I may
17 want to put him back on. I want him here to see
18 these slides.

19 THE COURT: If you can locate him more
20 easily, Ms. Davies.

21 MS. DAVIES: I have a phone number. I
22 will make it available.

23 THE COURT: I would assume you are
24 wanting him sometime after the State rests. And
25 you do have one witness that you are recalling,

1 at any rate.

2 MR. STAFFORD: Yes, I will get him out
3 of the way.

4 THE COURT: We don't know what time to
5 have him here. I am talking about Espinola.

6 You go back to your expert for a
7 couple of minutes. And y'all are in charge of
8 beeping Kennedy to get back over here.

9 (Recess; after which, the following
10 proceedings were had in the presence of the
11 jury:)

12 THE COURT: Proceed, please.

13 LARRY HOFFMASTER,
14 called as a witness by the State and on the
15 stand at the time of the recess, resumed the
16 stand and testified further as follows:

17 CROSS EXAMINATION

18 BY MS. KAISER:

19 Q. Do you recall approximately when it
20 was that you actually became involved in this
21 case?

22 A. I think the first time I talked with
23 the district attorney about it was probably four
24 months ago, four or five months ago.

25 Q. What is your educational background,

1 please?

2 A. High school education.

3 Q. Here in Houston?

4 A. Yes.

5 Q. Where did you go to school?

6 A. Reagan.

7 Q. I have a few questions, and then we
8 will be done.

9 A. Okay.

10 Q. The blood dripping, let's go, first of
11 all, to the kitchen area where there was a
12 bloody footprint and then there was the drops of
13 low velocity spatter on the floor.

14 A. Yes.

15 Q. There was one shot that had a low
16 velocity spatter that was kind of next to the
17 kitchen sink at the baseboard, kind of dribbled
18 down a little bit on to the floor. Do you
19 recall which picture I am talking about?

20 A. Yes.

21 Q. I believe, during your direct
22 examination, you made a comment that that wasn't
23 unusual to see blood dripping around the sink
24 area like that because many times the assailant
25 would go to the kitchen sink in an attempt to

1 clean themselves up a little bit.

2 A. That is correct.

3 Q. You didn't find any blood in the sink;
4 did you?

5 A. The report indicated there was.

6 Q. Did we see that in any of the
7 photographs?

8 A. No.

9 Q. There were photographs of the kitchen
10 sink; were there not?

11 A. I did not see any other than the one I
12 showed you.

13 Q. Was there any indication of blood
14 found on the kitchen faucet handle, to your
15 knowledge?

16 A. I don't know.

17 Q. The drawer, the knife drawer in the
18 kitchen that had the blood drops, a few blood
19 drops inside it and also the transfer on the
20 edge, you have no way of knowing whether or not
21 the transfer that was on the edge of that drawer
22 was made by somebody that opened the drawer or
23 was just standing there and touched the drawer.
24 You can't really tell that one way or another;
25 can you?

1 A. Make sure I understand.

2 Q. How can you tell the difference
3 between the -- if the fingers are placed in the
4 same place, if they just rest their hand and
5 they transfer blood one way or another, how do
6 you know if they opened the drawer?

7 A. It appears from the location, it was
8 on the inside pulling outward. Also, the low
9 velocity drop of blood was inside the drawer,
10 which would indicate their hand was over, or
11 wherever the wound was, was over that location.

12 Q. But, at the same time, they could have
13 just rested their hand in that manner and the
14 blood dropped; could it not?

15 A. That is possible.

16 Q. We don't have any great shots of the
17 kitchen sink here, unfortunately. I am showing
18 you what has been marked State's Exhibit 9.
19 It's a pretty far-off view. Do you see any
20 blood drops apparent in the kitchen sink from
21 that photo?

22 A. No.

23 Q. One of the things that you testified
24 to Ms. Davies that you frequently look for in a
25 crime scene were low velocity drops of blood

1 because frequently the defendant would get cut
2 in some way by the knife; is that correct?

3 A. That is correct.

4 Q. But I believe it was your testimony
5 that he could either get cut by the knife
6 slipping in his hand or by fighting over the
7 knife and grabbing the knife. Would that also
8 be consistent with him being cut?

9 A. Yes.

10 Q. If a person received blows that don't
11 cause blood, there is no spatter, so you know
12 nothing about those in your analysis of blood
13 spatter testimony; is that true?

14 A. That would be correct.

15 Q. So it's only the blows that produce
16 the blood and the blows following the production
17 of the blood that causes spatter that you talked
18 about when you look at the pattern?

19 A. Yes, that is true as far as the blood
20 spatter goes.

21 Q. And I believe also it was your
22 testimony that generally, except in extreme
23 circumstances and an extremely heavy instrument
24 was used, generally a first blow doesn't create
25 a spatter. Wasn't that your testimony?

1 A. That is correct.

2 Q. And it would be the second or
3 subsequent blows that might create a spatter.
4 And I would assume that subsequent blows would
5 create more splatter than the very first initial
6 one?

7 A. Yes, that is correct.

8 Q. If a person is standing upright and
9 they receive an initial blow with not the heavy
10 type of an instrument that you were saying would
11 be the exception to the rule, then there would
12 generally be no spattering there for you to base
13 an opinion on; is that correct?

14 A. That would be correct.

15 Q. And the second blow that may create a
16 bit of a spatter -- let me back up a little
17 bit. If a person is standing upright and there
18 is a spatter, an initial splatter from the top
19 of their head area, isn't it true that the upper
20 body of the individual would be the more likely
21 -- and walls or whatever goes up horizontally
22 -- would be the more likely place for that
23 spatter to end up? You wouldn't necessarily
24 think that the first blow that produces a
25 spatter would spatter a leg?

1 A. Yes, I would agree with your
2 statement, that probably the walls or upper area
3 would receive most of that, yes.

4 Q. And, so, it might just be subsequent
5 blows that create a greater amount of spatter,
6 or perhaps thereafter, if that person is no
7 longer in an upright position, that their leg
8 may receive some spatter on it; would that not
9 be true?

10 A. Yes.

11 Q. It's difficult at times, when you are
12 coming in after the fact and just have
13 photographs to look at, you can just imagine all
14 the movement that has taken place in a situation
15 like this because nobody just sits around and
16 gets beat up?

17 A. Right.

18 Q. And, so, it's really difficult to sit
19 and think about who was where and when and how
20 everything interacted; isn't that true? It's
21 almost impossible to put it all together with
22 any kind of certainty; isn't it?

23 A. I am not sure how to answer that. As
24 far as the things that I told you awhile ago, I
25 feel certain about those movements. As far as

1 detailed movements, no, I couldn't say.

2 Q. It wouldn't be unusual if someone had
3 received a couple of blows while they were
4 upright, fell against the bed and a struggle
5 ensued and continued in the bed, for one leg as
6 opposed to both legs to get wrapped up in a
7 cover or in a sheet or something of that nature;
8 would it?

9 MS. DAVIES: Your Honor, I object to
10 speculation.

11 THE COURT: I am going to allow him to
12 answer if he can.

13 If you can answer that, sir, you
14 may.

15 A. I don't think it would be unusual; but
16 then again we weren't basing the whole analysis
17 on that one point. There were several things
18 put together there.

19 Q. I understand. But it is possible,
20 that if one leg became covered up or underneath
21 a sheet or cover early on in the struggle, that
22 you would not see blood on that leg or foot
23 because it was covered up?

24 A. That is possible, if it occurred
25 before the blood was spattering.

1 Q. Or if it occurred -- even if there was
2 some initial blood spatter like we talked about
3 just a few moments ago where they were standing
4 up but it was not a great amount and it was
5 absorbed either by the upper body or by the
6 walls or whatever was surrounding it and didn't
7 ever make it down to the leg?

8 MS. DAVIES: I object.

9 Q. Isn't that true?

10 A. Could you repeat the question?

11 BY MS. KAISER:

12 Q. That would also be true in the
13 situation that we were speaking of just a few
14 moments earlier where one or two blows had been
15 received while the victim was in an upright
16 position and the blood -- and although there was
17 blood spatter, it was either caught by the upper
18 body or the wall surrounding it; isn't that
19 true?

20 A. Yes.

21 Q. And I believe it was your testimony
22 that a good part of the blood on Charles' right
23 leg, the one that was not covered up by the
24 cover, was transfer blood; was it not? There
25 was some spatters on the foot and there was a

1 lot of transfer blood on the thigh?

2 A. I testified to spatter on the foot.
3 I don't think I mentioned what type of blood was
4 on the leg. There was blood there, but I didn't
5 make a determination on what caused that.

6 Q. Showing you what has been marked as
7 State's Exhibit 90. Does this appear to be
8 transfer type blood in this area here?

9 A. I can't make a determination on that.

10 Q. It's not blood droplets, though; is it?

11 A. At this point, it's not. Yes, I guess
12 that would be the best way to describe it now is
13 smeared blood now.

14 Q. And that could have gotten there
15 several ways, but one of the ways that it might
16 have gotten there, would be consistent with two
17 people struggling and one person that had some
18 blood on them rubbing up against this leg?

19 A. That is possible.

20 Q. I believe it was also your testimony
21 that the one slide that you had -- actually you
22 had two made. The slide that you had made from
23 the video of the inside wall of Charles' bedroom
24 next to the doorway -- are you familiar with the
25 slide that I am talking about?

1 A. Yes.

2 Q. Had a series of what you called
3 arterial spurting and some little run lines from
4 that spurting. I believe it was further your
5 testimony that also on that wall there was
6 medium velocity blood spatter?

7 A. Yes.

8 Q. You have no way of knowing who that
9 medium velocity spatter came from; do you?
10 Wouldn't it be just as consistent that Charles
11 was standing there, received an initial blow
12 that caused no spatter there, the second blow
13 that went out horizontal, did not end up on his
14 leg, fell upon the bed, and that is where the
15 remainder, the balance of the attack occurred,
16 would that not also cause that medium velocity
17 blood spatter on that wall?

18 A. It would cause medium velocity
19 spatter; however, I would think if we were
20 receiving those kind of blows we would have some
21 low velocity drip blood on the way up to the bed.

22 Q. Well, but if he had on a T-shirt, had
23 a lot of long, thick hair that would absorb
24 blood, and keeping in mind that this happened
25 extremely quickly, it doesn't take much time in

1 an attack to cover four feet?

2 A. No.

3 Q. It wouldn't be that unusual for you
4 not to have a lot of drips of blood in that four
5 feet?

6 A. It would be possible to do that.

7 MS. KAISER: Pass the witness.

8

9 REDIRECT EXAMINATION

10 BY MS. DAVIES:

11 Q. Sergeant, if a person first such as
12 Charles -- I am not sure if you have seen a
13 picture of Charles and the type of hair he had.
14 Let me show you what is in evidence as State's
15 Exhibit 108. The young man on the left marked
16 as Charles. You can see he does have a fair
17 amount of hair?

18 A. Yes.

19 Q. If the first blow Charles received was
20 a blow to the face, maybe fractured his nose,
21 caused bleeding to the face, would you expect,
22 if he was in an upright position, for his hair
23 to catch and collect that blood to keep it from
24 dripping to the floor?

25 A. From having been hit in the nose?

1 Q. From being hit, whether it's the jaw,
2 the nose or the eye area, if he received blows
3 to the face front on initially, would you expect
4 his hair to collect the blood and keep it from
5 dripping down?

6 A. If he was in a standing position, no.

7 Q. If he was lying on the bed, would that
8 hair perhaps then collect that blood and absorb?

9 A. From being hit in the face?

10 Q. Yes, sir. If he is lying down?

11 A. Yes, it could run to his hair from gravity.

12 Q. So the gravity would control the
13 direction of the blood, in other words, from
14 that type of wound?

15 A. Yes.

16 Q. And if he was in an upright position,
17 if I am understanding you, the hair is not what
18 would be collecting at that point; would it?

19 A. Not from being hit in the face, no.

20 Q. Ms. Kaiser suggested a number of
21 possible scenarios. Do any of those
22 possibilities that have been suggested change
23 your opinion of the evidence that you analyzed,
24 change your opinion in regard to that opinion
25 that you said in your opinion Charles was most

1 likely attacked in his bed?

2 A. No.

3 MS. DAVIES: Pass the witness.

4

5 RE CROSS EXAMINATION

6 BY MS. KAISER:

7 Q. Sergeant, there was a fair amount of
8 blood collected on the carpeted area right there
9 inside the entrance to Charles' bedroom; was
10 there not?

11 A. Yes.

12 Q. I suppose, if somebody had a bloody
13 nose or something like that, it could also have
14 fallen down on the carpet; could it not?

15 A. Yes.

16 Q. And the fact that they are being hit
17 on the face would eventually be absorbed by
18 their hair only if they were lying down -- let
19 me back up a little bit. If a person received a
20 blow initially and they are upright, they are
21 standing up, and the blood starts running down,
22 but then at a very short time thereafter then
23 they are lying down, then the blood changes
24 direction, it doesn't just immediately, I mean,
25 this happens over a period of time, and the

1 blood continues to flow, so just because the end
2 result is that a person is lying down and the
3 blood is collected in back of them as if they
4 had been face up for a period of time, that
5 really isn't indicative of how everything
6 started; is it?

7 A. --.

8 Q. They could have started in an upright
9 position.

10 A. I'm sorry, you lost me on that.

11 Q. Is it not possible that the
12 altercation could have started when they were in
13 an upright position, at a very short point
14 thereafter ended up in a lying position, and you
15 would expect to see the same scene?

16 A. I don't know how to answer that.
17 What I based my decision on was the lack of
18 disorder at the scene other than in that room,
19 the fact that the hair transfers were on the
20 pillow that started in the position where you
21 would normally lay, the medium velocity transfer
22 around the bed from the beating, the lack of
23 blood trail going up to it. Those type of
24 things is what I based that on. I am sorry, I
25 couldn't make a determination on what you just

1 said to me.

2 MS. KAISER: Pass the witness.

3 MS. DAVIES: No further questions.

4 May Sergeant Hoffmaster be excused?

5 MR. STAFFORD: We may want to call him
6 back.

7 THE COURT: Remain on call.

8 Call your next.

9 MS. DAVIES: Your Honor, at this time
10 the State will offer into evidence the diagrams
11 State's Exhibits 10 and 12. With the Court's
12 permission, I will provide -- actually I have
13 provided a Polaroid photograph to substitute for
14 the DNA poster that was marked State's Exhibit
15 107. And I would mark the photograph in the
16 same way. The mannequin, which has been used
17 and marked as State's Exhibit 109, I offer, with
18 the Court's permission, to substitute multiple
19 Polaroid photographs showing the mannequin from
20 each view for the record after the conclusion of
21 the trial.

22 THE COURT: All right, you are
23 offering State's Exhibit 10, State's Exhibit No.
24 12, State's Exhibit 107 to be a photograph of
25 the DNA poster that was originally marked

1 State's Exhibit No. 7. And as to State's 109,
2 are these going to be 109 A through something?
3 Let's get the number of photographs you are
4 going to have.

5 MS. DAVIES: I believe five
6 photographs will suffice, 109-A through E.

7 THE COURT: You understand the tender,
8 Mr. Stafford?

9 MR. STAFFORD: Yes, Your Honor.

10 THE COURT: Any objection?

11 MR. STAFFORD: No objection.

12 THE COURT: State's Exhibits ten and
13 twelve are admitted. State's Exhibit 107, a
14 photograph of the DNA poster, is admitted.
15 State's Exhibits 109-A through E are admitted.
16 Those being five photographs of the mannequin
17 which was originally marked as State's 109.

18 MS. DAVIES: Your Honor, my proffer of
19 the photographs 109-A through E are for purposes
20 of the record only. I am offering 109 just for
21 trial purposes, and will ask to substitute A
22 through E for the mannequin at the conclusion of
23 trial.

24 THE COURT: How about the poster?
25 Same thing?

1 MS. DAVIES: Yes. I just want to
2 substitute photographs for the record.

3 THE COURT: If these are items that
4 are later requested or reviewed by the jury, the
5 actual mannequin will be available, as the
6 original poster.

7 MS. DAVIES: Correct.

8 THE COURT: All right.

9 Anything else?

10 MS. DAVIES: Are all those items
11 accepted in evidence?

12 THE COURT: Those are all admitted.

13 MS. DAVIES: That concludes the
14 evidence from the State on the issue of guilt.
15 The State rests.

16 THE COURT: Mr. Stafford.

17 MS. KAISER: Mr. Sanders approached me
18 in the hallway and asked if we were planning on
19 calling him, and I believe we are not. He asked
20 that he be excluded from the rule and allowed to
21 be in the courtroom.

22 THE COURT: Well, I don't think that
23 is a proper matter to take up at this moment
24 without having first conferred with the
25 prosecutor. I don't know.

1 MS. DAVIES: We will discuss it during
2 the break.

3 THE COURT: I'm sorry, you were
4 attempting to call?

5 MR. STAFFORD: Kennedy.

6 STEWART H. KENNEDY,
7 called as a witness by the State, having been
8 previously sworn, resumed the stand and
9 testified further as follows:

10 CROSS EXAMINATION

11 BY MR. STAFFORD:

12 Q. Sergeant, will you restate your name?

13 A. Stewart H. Kennedy.

14 Q. You are the same Sergeant Kennedy that
15 previously testified before; are you not?

16 A. Correct.

17 Q. And very briefly, directing your
18 attention back to the day that you made the
19 scene, could you tell the jury -- I think it was
20 your testimony, other than the scene officer,
21 when you arrived, had the ambulance personnel
22 arrived yet?

23 A. Are you talking about the Houston Fire
24 Department ambulance personnel?

25 Q. Yes.

1 A. I never saw them. I assumed they had
2 already arrived and gone.

3 Q. But the scene was secure?

4 A. Yes, it was.

5 Q. And basically at that particular time,
6 when you arrived, was there anybody in the house
7 at all?

8 A. Only police personnel.

9 Q. How many police personnel?

10 A. Two or three uniformed patrolmen and
11 Officer Jordan with CSU.

12 Q. Can you tell the jury, that based upon
13 the policy of the Houston Police Department, do
14 the scene officers get certain training as to
15 what they should do or not do?

16 A. Yes.

17 Q. One of the things that they are
18 trained to do is not to touch any of the
19 evidence or unlock any doors or windows, et
20 cetera until you arrive and give whatever
21 instructions you want to give; is that correct?

22 A. That is correct.

23 Q. So, the photographs which have been
24 taken in this case pretty well accurately depict
25 the way you found the scene when you arrived?

1 A. That is correct.

2 Q. If I may, could you tell the jury, if
3 you recall, the night before or that morning,
4 had it been raining out there at all?

5 A. I don't recall. I think there was
6 some mud around the house. My recollection is
7 it had been raining, but I don't recall how
8 much.

9 Q. It was fairly muddy, consistent with
10 maybe a rain that night or the day before?

11 A. Something like that.

12 Q. It would be safe to tell the jury,
13 that when you drove up there, looking down the
14 driveway, that it was very obvious that you
15 could see a car parked there; could you not?

16 A. I'm sorry, could you repeat your
17 question?

18 Q. You could see a car. I believe he
19 had a Blazer; was it not?

20 A. Talking about the vehicle at the rear
21 of the house?

22 Q. Yes?

23 A. Yes.

24 Q. Standing at the head of the driveway
25 looking down, you could see a Blazer?

1 A. Yes.

2 Q. Also, on State's Exhibit No. 6, it's
3 readily apparent that the porch light, both
4 porch lights are on; is it not?

5 A. That is correct.

6 Q. So, basically, at 2:30 at night, if
7 this was the time this attack occurred, the
8 front porch light would have been on? That is
9 assuming that this picture actually depicts what
10 was going on at 2:30 at night?

11 A. Assuming that, yes.

12 Q. And there is nothing in your
13 investigation that would indicate to you that
14 the lights were not on at 2:30 at night; is there?

15 A. No.

16 Q. And, also, if I may show you what has
17 been marked as State's Exhibit No. 63. That is
18 a picture of the dining room with the Grand
19 Piano, and there is a light on in there; is
20 there not?

21 A. Yes.

22 Q. And that room is facing, or the light
23 would reflect into the driveway; would it not?

24 A. It's on the north side of the house.
25 I don't know whether it would reflect on the

1 driveway or not.

2 Q. I may have my semantics wrong. If I
3 was walking up the driveway, assume the driveway
4 is here and the back of the house was there,
5 would the dining room be on my left?

6 A. Yes, sir.

7 Q. And the only thing on the windows was
8 blinds?

9 A. Correct.

10 Q. Mini blinds. So there would be some
11 light reflecting through, you could tell the
12 light could be on in that room?

13 A. Yes.

14 Q. So at 2:30 at night, if someone walked
15 by that house, they could see a light on in the
16 dining room and a light on in the front porch;
17 is that correct?

18 A. If they are on, yes.

19 Q. And, also, if you were in the middle
20 of the road there on Keith Street and I was
21 standing underneath the porch light looking out
22 at the street at you, I would be very well
23 illuminated; would I not?

24 A. I would assume so, yes.

25 Q. Thus, being able to see the length of

1 my hair and the color of my hair?

2 A. I would assume so. I am not
3 positive. I would assume you could.

4 Q. Can you tell the jury -- the pictures
5 that have been introduced, it's difficult to
6 tell -- were there any lights on in the back of
7 the house? Outside lighting?

8 A. I do not know.

9 Q. Did you make any determination whether
10 there were any kind of lighting that came on
11 automatically at night like some sort of vapor
12 light?

13 A. I do not know.

14 Q. And if I may -- I am losing all my
15 exhibits here. I think you previously
16 testified, that as far as Charles' room is
17 concerned, there was a door that went out to the
18 back area?

19 A. Backyard?

20 Q. Yes, sir?

21 A. Yes.

22 Q. That had a curtain on it; did it not?

23 A. Yes.

24 Q. And also the windows, as reflected in
25 State's 79, also had blinds on them?

1 A. Yes.

2 Q. And also there was no light on in that
3 room when you made the scene; is that correct?

4 A. That is correct.

5 Q. And if all the blinds were closed and
6 there was covering on the back door at 2:30 at
7 night, there would be no known light source
8 coming into that room; would there?

9 A. Not to my knowledge.

10 Q. Thus, that room would be dark, it
11 would be safe to assume?

12 MS. DAVIES: Object to speculation
13 about how much light would have been in that
14 room under those circumstances.

15 THE COURT: Sustained.

16 BY MR. STAFFORD:

17 Q. You have already testified you didn't
18 see any lights on in the back on the back patio;
19 is that correct?

20 A. That is correct. I am not aware of
21 any, no.

22 Q. And as far as Charles' room is
23 concerned, on this side of the house, which
24 would be the -- this is the driveway side; is it
25 not?

1 A. Yes.

2 Q. There are no lights on this side?

3 A. To my knowledge. I don't know
4 whether there is or there isn't.

5 Q. There is three windows there; correct?

6 A. Correct.

7 Q. And they all had blinds on them; correct?

8 A. Yes.

9 Q. And all these windows -- well, that is
10 in the bathroom. Was any lights on in the tub
11 in the master bedroom that you recall?

12 A. Not that I recall.

13 Q. And after making your initial
14 investigation, was it at that particular time
15 you went around to check to see if all the
16 windows were locked?

17 A. Yes.

18 Q. Tell the jury what you found.

19 A. All the windows were locked. Closed
20 and locked.

21 Q. And from your investigation, all the
22 back doors were locked?

23 A. When I arrived at the scene, the back
24 door was open.

25 Q. You received information somebody got

1 the key and let them in the back?

2 A. Yes, sir.

3 Q. Was the front door closed or open when
4 you arrived?

5 A. It was closed.

6 Q. Do you know who initially first tried
7 the front door?

8 A. I do not know.

9 MS. DAVIES: Object to hearsay.

10 THE COURT: It's overruled. He has
11 already answered it, anyway.

12 BY MR. STAFFORD:

13 Q. Can you tell the jury or describe to
14 the jury, as far as the front door is concerned,
15 assuming this is the front door -- if I recall
16 from the pictures, that had a door knob not
17 quite this color, but it had a doorknob; did it
18 not?

19 A. Yes, sir.

20 Q. Was this the type of doorknob that
21 would lock or had a key in it, or was it just a
22 regular?

23 A. I don't recall if the doorknob itself
24 actually had a key lock in it.

25 Q. There was a dead bolt?

1 A. There was a single throw dead bolt.

2 Q. That dead bolt was the type that you
3 could lock it from inside; it didn't need a key?

4 A. Correct.

5 Q. So I could lock it. And taking my
6 client's confession where he states that he saw
7 Mr. Allen in the doorway, can you tell the jury,
8 from your conversation with Mr. Rhoades during
9 the taking of the confession, your present sense
10 impression, was the door open like this, or was
11 the door closed after Mr. Allen went in?

12 A. Can you repeat that? I am not sure I
13 followed.

14 Q. The statement, if I may, I furnish you
15 a copy of it. I may be kind of jumping ahead of
16 myself. He said, "I ran around to the front of
17 the house. The front door was open, and I went
18 inside."

19 A. Where are you at?

20 Q. On page two of five.

21 A. Okay.

22 Q. Let me withdraw that question. I will
23 come back to it in just a minute. I think it
24 will make more sense.

25 Can I have your offense report?

1 A. I don't have it with me.

2 MS. DAVIES: I have it here.

3 MR. STAFFORD: Will you tender it?

4 MS. DAVIES: There is a request for
5 Sergeant Kennedy's report?

6 MR. STAFFORD: And anything he read to
7 refresh his memory.

8 MS. DAVIES: Assuming Sergeant Kennedy
9 also read his partner's supplement, I am going
10 to tender Sergeant Kennedy's and Maxey's
11 supplement to defense counsel at this time.

12 BY MR. STAFFORD:

13 Q. So, after making your initial window
14 survey, determining that the windows were
15 locked, you also checked the doors; did you not?

16 A. Correct.

17 Q. To see if there were any pry marks or
18 anything of that nature was present?

19 A. Yes, sir.

20 Q. And you didn't find any; did you?

21 A. No, I did not.

22 Q. And, also, I think, from your direct
23 examination testimony, you went throughout the
24 house. Other than the blood splattering and the
25 various bloody scenes, the house really wasn't

1 that torn up; was it?

2 A. No, it was not.

3 Q. And you fairly quickly determined that
4 it didn't appear that burglary was the motive
5 because of what items were undisturbed, drawers
6 not being gone through, clothes in the closet
7 not strewn around, things of that nature; correct?

8 A. Correct.

9 Q. After further investigation and
10 talking to the family and other members, when
11 they surveyed what was there as far as the major
12 items was concerned, it was pretty well apparent
13 that burglary wasn't a motive at that particular
14 time; correct?

15 A. Regarding major items, yes.

16 Q. You can tell the jury -- were the car
17 keys to the automobile there in the house?

18 A. No.

19 Q. They had disappeared?

20 A. That is correct.

21 Q. And could you, after the
22 investigation, as far as the musical equipment
23 and Charles' bedroom, did you place any dollar
24 value on those?

25 A. I don't know the exact dollar amount,

1 but it's worth quite a lot of money.

2 Q. It could be something a fence or a
3 pawnbroker would take pretty quickly and pretty
4 rapidly on a hock; wouldn't he?

5 A. Yes.

6 Q. There was televisions there; correct?

7 A. Yes.

8 Q. They weren't taken?

9 A. No.

10 Q. And I think you had already said there
11 were some credit cards that were there that were
12 not taken?

13 A. Yes.

14 Q. So a lot of things that thieves
15 normally take were not taken and not disturbed;
16 is that correct?

17 A. That is correct.

18 Q. You told the prosecutor in her direct
19 examination of you that you and your partner
20 were working endlessly looking for leads, trying
21 to figure out what happened, and still basically
22 butting your head up against the wall and not
23 making any headway?

24 A. That is correct.

25 Q. Until you got that call on October

1 11th about someone wanting to see you in
2 Pasadena about this case?

3 A. That is basically right, yes, sir.

4 Q. And as we discussed before, you had no
5 leads, and to this day you wouldn't know who had
6 committed this offense if you had not got that
7 call on October 11th unless someone called and
8 tipped you off?

9 A. There are several scenarios where we
10 could have found out who did it.

11 Q. At that particular time, none of the
12 scenarios were working?

13 A. That is correct.

14 Q. And you told the prosecutor basically
15 about his demeanor, et cetera, when he first
16 came in to talk to you. I think she asked you
17 the question because, or just because, or asked
18 you the question was he crying or sobbing. Do
19 you remember that question?

20 A. Yes, I do.

21 MS. DAVIES: I object to misstatement
22 of the question. I don't believe I ever asked
23 if he was sobbing.

24 THE COURT: If he remembers some kind
25 of question, he can clarify it.

1 BY MR. STAFFORD:

2 Q. Something, whether he was shedding
3 tears. You are not suggesting that if I, for
4 example, give a confession to you about a crime
5 that I committed a month after the fact, that if
6 I am not sobbing or crying, this does not mean
7 that I am not telling you the truth or not
8 remorseful about what happened because I am not
9 in an emotional state of being?

10 MS. DAVIES: Object to speculation on
11 Mr. Stafford's emotional reaction.

12 THE COURT: It's overruled.

13 BY MR. STAFFORD:

14 Q. The bottom line is just because
15 someone is not crying when he is giving you a
16 confession doesn't mean that he is not telling
17 you the truth or does not mean that he is not
18 remorseful about what he did?

19 A. No, it does not.

20 Q. And you told the prosecutor that he
21 was rather forthcoming in his deliverance or
22 what he was telling you about what happened; is
23 that correct?

24 A. That is correct.

25 Q. Would you describe him cocky at all?

1 Or how was his attitude?

2 A. Not when I talked to him.

3 Q. Wasn't cocky to you at all. Was he
4 talking fast, talking slow? How would you
5 describe the way he was talking when you first
6 got him in the interview room?

7 A. As I stated previously, he was calm
8 and collected and talked in a normal way.

9 Q. And I think you told the prosecutor
10 basically that y'all talked for about twenty
11 minutes before you actually started typing
12 everything down?

13 A. Approximately.

14 Q. And you talked about various things,
15 about his background, things of that nature; is
16 that correct?

17 A. Are you talking about his personal
18 life?

19 Q. Yeah.

20 A. Afterwards.

21 Q. But before he started giving the
22 confession, though, he told you that he was
23 thinking about committing suicide, though;
24 didn't he?

25 A. Yes, he did.

1 Q. And that this had been really
2 bothering him and he was tired of running?

3 A. Is that a question?

4 Q. Yes. I mean, he told you that; is
5 that correct?

6 A. Yes.

7 Q. And would you describe his demeanor as
8 being somewhat relieved to tell you about what
9 had happened? Wanting to tell you what he did,
10 how it happened?

11 A. I didn't perceive it as being such.
12 He was pretty calm and collected through the
13 whole thing.

14 Q. And gave his statement?

15 A. Yes.

16 Q. And I think we had also -- you told
17 Ms. Davies that when you first went out there
18 you had thought it was co-defendant or somebody
19 in trouble who was going to do some trading with
20 you for some information?

21 A. That is what I assumed, yes.

22 Q. For the purpose of the jury who
23 haven't been around criminal law, often people
24 get in trouble and try to--

25 MS. DAVIES: Object to the relevancy

1 of what might have happened in other cases.

2 THE COURT: It's overruled.

3 BY MR. STAFFORD:

4 Q. People try to exchange information for
5 a lighter sentence or lighter charge if they
6 give you this information?

7 A. Correct.

8 Q. But the point I am leading up to,
9 before Mr. Rhoades gave his confession he did
10 not negotiate with you about I will tell you
11 something if you charge me with voluntary
12 manslaughter or aggravated assault; did he?

13 A. No, he did not.

14 Q. Did not attempt to barter with you at
15 all?

16 A. Not at all.

17 Q. And when the confession started off,
18 from beginning to the end of the confession, he
19 was fairly consistent about one thing or two
20 things, that he did not enter that house with
21 intent to commit a burglary or theft; is that
22 correct?

23 A. That is what he told us.

24 Q. And that he also entered that house
25 with no intent to kill anybody, hurt anybody or

1 do any bodily harm? That was not his intent of
2 going into the house?

3 MS. DAVIES: I object. There is
4 nothing in evidence that I am aware of that
5 illustrates that intent or that being indicated
6 by this defendant to Sergeant Kennedy.

7 THE COURT: Well, he can so respond.

8 MS. DAVIES: I object to assuming
9 facts that are not in evidence.

10 THE COURT: Sustained.

11 BY MR. STAFFORD:

12 Q. During your interview of him -- and
13 you have already told the jury through questions
14 by the prosecutor that there's a lot of things
15 that were said and talked about between you and
16 Mr. Rhoades that did not make it in the
17 confession; is that correct?

18 A. Yes.

19 Q. One of the things that was apparent to
20 you throughout your conversation with Mr.
21 Rhoades is that he did not go in there with the
22 intent to kill anybody or hurt anybody?

23 A. Well, as far as killing anybody, I
24 don't know. I think he told me several times
25 he went in there because him and whoever was

1 standing in the doorway were mad at each other
2 and were going to fight.

3 Q. If we may, when you take the
4 confession -- I would like to go over it with
5 you and point out some things and see if they
6 are corroborated by the evidence or by the
7 things we know in this particular case. Once
8 you took the confession, I think one of the
9 first things that Mr. Rhoades told you that he
10 had gone by several assumed names; is that
11 correct?

12 A. Yes, sir.

13 Q. You verified that?

14 A. Yes.

15 Q. That was true?

16 A. Yes, it was.

17 Q. Also he told you that he had been to
18 the joint four times, twice in Indiana and twice
19 here in Texas, and you verified all of that;
20 didn't you?

21 A. Correct.

22 Q. And you also determined that he
23 processed out of the Walls, in other words, he
24 just got out of prison; you verified that;
25 didn't you?

1 A. Yes, sir.

2 Q. He told you the truth about that.

3 Now, also, in the first or second
4 paragraph he said I have been to the joint twice
5 in Indiana and twice in Texas, always been for
6 burglary or auto theft, never for anything
7 violent. That was his statement?

8 A. Yes.

9 Q. And when you checked his record, that
10 is what you determined, he had never been to
11 prison for anything violent?

12 A. That is correct.

13 Q. And as far as his path that he took or
14 that he suggested that he took as far as walking
15 down Mize Street, going down Keith Street, it
16 was fairly consistent of the diagram that the
17 State introduced here. Very consistent with the
18 layout that she has introduced under State's
19 Exhibit No. 12, as far as the route that he
20 took, in his statement?

21 A. Yes.

22 Q. Very consistent with what we already
23 know from the State's Exhibit.

24 And he stated that he had over a
25 hundred dollars in his pocket from getting out

1 of prison. Do you know from your past
2 experience as a police officer that TDC does
3 give their releasees a couple of hundred dollars
4 when they are released?

5 A. Yes, I do.

6 Q. From your calculations, how long had
7 he been out of prison approximately when this
8 happened?

9 A. Approximately a day.

10 Q. Somewhere in twenty-four hour
11 period. Or maybe less than twenty-four hours.

12 A. Less than twenty-four hours.

13 Q. So he would have had two hundred
14 dollars, or whatever was left over from playing
15 video and buying beer.

16 MS. DAVIES: I object to what was it,
17 a sidebar remark?

18 THE COURT: Sustained.

19 MS. DAVIES: Ask for the jury to
20 disregard.

21 THE COURT: Disregard the last
22 statement by the defense attorney, ladies and
23 gentlemen.

24 BY MR. STAFFORD:

25 Q. According to the confession, Sergeant

1 Kennedy, he said he bought some beer and played
2 video and ate a sandwich; right?

3 A. Correct.

4 Q. If he had two hundred dollars when he
5 got out of prison, it would be minus beer,
6 sandwich and video games?

7 A. I don't know exactly what they give
8 them when they get out of the joint.

9 Q. They give them some money. And he
10 tells you he had over a hundred dollars in his
11 pocket. That is what he confessed to; correct?

12 A. Yes.

13 Q. In the same paragraph on page two, he
14 said he didn't have any weapons of any kind.
15 Correct? When he went into the house?

16 A. That is what he said.

17 Q. The State has introduced three knives
18 in this case. And I am sure you have already
19 examined them before testifying. All three
20 knives are of the same brand and the same make;
21 are they not?

22 A. They appear to be.

23 Q. They are all Wilkerson Sword stainless
24 steel knives?

25 A. Yes, sir.

1 Q. There is nothing in your offense
2 report that would indicate that any other
3 weapons were found in the house nobody knew who
4 they belonged to; is that correct?

5 A. Other than the bars.

6 Q. Other than the bars.

7 A. Yes, sir.

8 Q. And when he was describing to you
9 about the confrontation that he had with the
10 gentleman that was in the doorway because he
11 didn't know who the person was, in his
12 statement; correct?

13 A. Correct.

14 Q. And from your talking to him, you knew
15 or had the presence sense impression that Mr.
16 Rhoades did not know these gentlemen previously?

17 A. That is what he told me.

18 Q. That is what I am saying, based on
19 what he told you, he did not know them
20 previously?

21 A. Yes, sir.

22 Q. Based upon what he told you, he had
23 not been stalking out the house; is that correct?

24 A. That is what he told me, yes.

25 Q. And he basically was saying that when

1 the gentleman went inside the house he thought
2 he was going after a gun. And you have already
3 told the jury that if I was standing here in the
4 doorway with the light, I could be seen
5 sufficiently and there is sufficient light for
6 someone to be in the middle of the street and be
7 able to view me; is that correct?

8 MS. DAVIES: Your Honor, I object to
9 speculation about what some one generic person
10 could see from that distance.

11 THE COURT: This is also repetitious
12 of what we have heard. The jury has heard this
13 testimony.

14 BY MR. STAFFORD:

15 Q. I was asking questions previously and
16 I didn't go back to it about Mr. Rhoades'
17 statement the front door was open and I went
18 inside. Could you tell the jury, at the time
19 you were taking this statement, because "the
20 front door was open and I went inside" is kind
21 of an ambiguous statement; it could be two
22 things -- (1) the door was unlocked; or (1) the
23 door was open. From reading that statement, you
24 really can't tell about what it means by the
25 door being open. Was it open like this, or was

1 the door unlocked? When you wrote this down,
2 what was your impression at the time you wrote
3 this down?

4 MS. DAVIES: I object to speculation.

5 THE COURT: Sustained.

6 MS. DAVIES: If he wants to ask
7 exactly what Rick Rhoades said--

8 THE COURT: Sustained. You can go
9 into what he said or maybe what demonstration he
10 made as far as this witness is concerned.

11 BY MR. STAFFORD:

12 Q. The front door was open and I went
13 inside. When he made that statement, you had a
14 present sense impression what he meant.

15 MS. DAVIES: I object. He had a
16 present sense impression of what was said.

17 THE COURT: You haven't asked the
18 question yet, but I am supposing it's along the
19 same lines, so it will be sustained.

20 BY MR. STAFFORD:

21 Q. Did he tell you whether the door was
22 unlocked or whether the door was open?

23 A. He said the door was open.

24 Q. You don't know what that means?

25 MR. STAFFORD: Can I ask him his

1 opinion what he thought it meant?

2 MS. DAVIES: I object to speculation.

3 THE COURT: You can ask him. I think
4 the questions along this line are all going to
5 be sustained as to her objections.

6 BY MR. STAFFORD:

7 Q. I direct your attention to your
8 offense report. See if this refreshes your
9 memory as to what was said. I even marked it
10 for you. Would you read that paragraph?

11 THE COURT: Just a moment. You are
12 asking him to read it to himself?

13 MR. STAFFORD: Yes.

14 Q. For informational purposes of the
15 jury, offense report--

16 MS. DAVIES: Your Honor, I object to
17 defense counsel making speeches for
18 informational purposes.

19 THE COURT: Sustained. Just ask the
20 question.

21 BY MR. STAFFORD:

22 Q. What is an offense report?

23 A. Offense report is a police report,
24 police recollection of what happened, what
25 occurred.

1 Q. Does it contain summaries of
2 conversations that you have with individuals?

3 A. Yes.

4 Q. Is what I just had you read, is it a
5 summary of what people or i.e. Rick Rhoades told
6 you when you were talking to him in the
7 interview room at Pasadena, Texas?

8 A. Yes.

9 Q. Okay. And in that, doesn't it say
10 that -- you have the statement -- that he stated
11 that--

12 MS. DAVIES: I object to reading from
13 a document that is not in evidence.

14 THE COURT: Sustained.

15 BY MR. STAFFORD:

16 Q. Let me ask you this. Can you tell
17 the jury, after reading that document, after
18 reading that document, isn't it true that Mr.
19 Rhoades told you that after exchanging words the
20 gentleman entered the house leaving the door
21 open?

22 A. Yes.

23 Q. Leaving the door open means the door
24 was open like this; was it not?

25 MS. DAVIES: I object to asking this

1 witness to speculate or interpolate the meaning
2 of the word.

3 THE COURT: Sustained.

4 BY MR. STAFFORD:

5 Q. Further on down in his statement, the
6 same paragraph about the front door being open,
7 he said, "I went into the front door, and there
8 was a large family room. The kitchen was back
9 to the right."

10 A. Where are you at, Mr. Stafford?

11 Q. Right in this area.

12 A. Okay.

13 Q. If I can show you what has been marked
14 as State's Exhibit No. 13 and No. 19. He also
15 stated that he went into the weight room and
16 basically picked up a bar, which would be
17 consistent with what has been marked as State's
18 Exhibit No. 30; is that correct?

19 A. I would assume so.

20 Q. It has been introduced into evidence
21 as a bar.

22 A. Correct.

23 Q. This would be a bar that you would
24 expect to find in a weight room?

25 A. Yes.

1 Q. Is that correct? And where in the
2 weight room, from your conversations with him,
3 whether it was right inside the door, up against
4 the wall, or where in the room you really don't
5 know?

6 A. No, I don't.

7 Q. He didn't tell you other than he got
8 it out of that room.

9 And Mr. Rhoades further told you that
10 he was going back or he walked back into the
11 family room, which has already been introduced,
12 the chart here, the weight room being in this
13 area here. This would be the entrance going
14 back into the living room; is that correct?

15 A. Yes, sir.

16 Q. And the two exhibits being what? Of
17 the kitchen?

18 A. Thirteen and nineteen.

19 Q. They reflect that right in this area
20 the kitchen has an area that is broken out that
21 you can see into the kitchen from this area?
22 This area I am pointing from?

23 A. Yes.

24 Q. You can see into the kitchen from that
25 particular area, according to those exhibits?

1 A. That is correct.

2 Q. Because of the cutout in between the
3 living room and the kitchen, had a little bar
4 there, you can stand in that doorway and
5 actually see into the kitchen from the hallway
6 because of the cutout. I guess the point I am
7 making, or want to make, is that, if I am
8 standing here looking toward the kitchen, Mr.
9 Rhoades said he saw the gentleman who he didn't
10 know was in this area because, basically, this
11 is the area where the knives were supposedly
12 found, is that correct, that is pulled out here?

13 A. That is correct.

14 Q. And standing there, one could observe
15 someone in that position, according to the
16 State's exhibit; is that not true?

17 MS. DAVIES: Object to the speculation
18 about what an individual could observe.

19 THE COURT: You can ask this officer,
20 since he was inside the house, if he could see
21 that.

22 BY MR. STAFFORD:

23 Q. Did you ever stand in that location
24 and look back toward the kitchen?

25 A. Yes.

1 Q. And if I had been standing right
2 there, you could have seen me; could you not?

3 A. It's possible, yes.

4 Q. And, also, Mr. Rhoades told you, and
5 it has been read to the jury, that when he was
6 in this area, right in this area is where he got
7 confronted, according to his statement; is that
8 correct? That the man came into the -- the guy
9 then started coming towards me with a knife.

10 MS. DAVIES: Your Honor, I object
11 again to asking this witness to speculate or
12 interpret the words. The statement speaks for
13 itself.

14 THE COURT: I don't understand this
15 last question as asking him to interpret. It's
16 just exactly what the words were.

17 BY MR. STAFFORD:

18 Q. According to the statement, he is here
19 in the living room; correct? And according to
20 Mr. Rhoades' statement, that the unknown
21 gentleman was in the kitchen getting a knife; is
22 that correct?

23 A. Correct.

24 Q. And according to Mr. Rhoades'
25 statement, the gentleman came back into the room

1 and confronted him and asked him what in the
2 fuck he was doing; is that correct? Isn't that
3 what the statement says?

4 MS. DAVIES: Your Honor, I object.
5 Mr. Stafford is using a diagram to attempt to
6 get Sergeant Kennedy to pinpoint a specific
7 location on a diagram, interpreting the words
8 that were given on a typed statement. I object
9 to that.

10 THE COURT: Okay, first of all, there
11 is not any interpretation of the words Sergeant
12 Kennedy can tell what is in the statement or is
13 in evidence. He can read from it. And I don't
14 know what Mr. Stafford is doing over there, but
15 that is not testimony, whatever it is he is
16 doing.

17 MS. DAVIES: My point is, by combining
18 the two, he is in fact trying to elicit an
19 interpretation of the defendant's statement.

20 THE COURT: All he can achieve right
21 now is what the defendant said or did regarding
22 inside the house, how it relates to the alleged
23 confession.

24 BY MR. STAFFORD:

25 Q. Let me ask you this. Mr. Rhoades'

1 statement, after Mr. Allen asked him what he was
2 doing in his house, he made the statement, "I
3 thought about running out the door, but he had
4 me cut off"; is that correct? Is that the
5 statement he made?

6 A. Yes.

7 Q. And in his statement he had already
8 told the jury that he was right in this area
9 because he went into the weight room coming back
10 into the living room.

11 MS. DAVIES: I object, Your Honor.
12 The statement does not say I was right in this
13 area. The statement speaks for itself.

14 THE COURT: If y'all would like to
15 read the statement to the jury again, that's
16 fine, too; but it seems like we are wasting a
17 lot of time doing it in this fashion.

18 BY MR. STAFFORD:

19 Q. He stated in his confession that he
20 went back into the living room area, did he not,
21 after getting the bar?

22 A. Yes, sir.

23 Q. And hypothetically speaking, if one
24 was in this area and he was confronted in that
25 area, hypothetically speaking, his route to get

1 out the front door that he came in would be cut
2 off; would it not?

3 MS. DAVIES: I object to assuming
4 facts not in evidence. There is nothing in
5 evidence to suggest which area of the living
6 room the defendant was in.

7 THE COURT: Sustained.

8 BY MR. STAFFORD:

9 Q. But he did say his route was cut off?
10 Correct?

11 A. Yes.

12 Q. Did you actually examine the person of
13 Mr. Charles Allen at the scene?

14 A. Yes, I did.

15 Q. Was there anything there inconsistent
16 with what you saw to indicate that he was not
17 hit in the nose by Mr. Rhoades' fist?

18 A. I'm sorry, can you repeat that?

19 Q. Mr. Rhoades said that during the
20 scuffle he hit the person in the nose with his
21 right hand. From what you observed, was there
22 anything inconsistent with that statement?

23 MS. DAVIES: I object as to Sergeant
24 Kennedy's qualification.

25 THE COURT: Sergeant, do you

1 understand the question?

2 MS. DAVIES: Interpretation of the
3 physical, the medical expertise.

4 A. I think I understand the question. I
5 don't think I am qualified to answer it.

6 THE COURT: Then that's your answer.
7 BY MR. STAFFORD:

8 Q. And during your interview and taking
9 of the statement, Mr. Rhoades told you that he
10 cut his thumb during the process of this; is
11 that correct?

12 A. Yes.

13 Q. And it was due to him grabbing the
14 knife that the individual had in his hand?

15 A. That is what he stated, yes.

16 Q. And this knife has a ridge up here on
17 the top of it; does it not? It's not like the
18 top where it's smooth all the way across?

19 A. That is correct.

20 Q. And hypothetically speaking, this
21 notch there kind of acts as a stopper; doesn't
22 it? Kind of keeps the hand from sliding back
23 and forth a little bit, does it not, or could
24 act that way, could it not?

25 A. Yes.

1 Q. And if I can show you, as I'm holding
2 the knife, if I hit a hard object, assuming it
3 was being held this way, and it slipped in my
4 hand, the route that it would take, assuming it
5 was held like that, would be basically right in
6 that area there; would it not be? If my hand
7 slipped?

8 A. I assume so.

9 Q. Depending on how you were holding it?

10 A. Yes.

11 Q. His statement was he grabbed the knife?

12 A. Yes.

13 Q. And you observed the scar, or he
14 showed you the scar that was healing at the time
15 he was making the confession; did he not?

16 A. Yes.

17 Q. I previously have showed you what has
18 been marked as Defendant's Exhibits one through
19 four; have I not?

20 A. Yes, sir.

21 Q. And looking at those, do those
22 accurately depict and reveal the scar as it
23 appeared to you back at the time that you made
24 this statement, or Mr. Rhoades gave the
25 statement?

1 A. Basically, yes.

2 MR. STAFFORD: Your Honor, I would
3 offer one, two and three into evidence after
4 tendering the same to State's counsel.

5 MS. DAVIES: May I see all four
6 photographs that have been identified, please?

7 THE COURT: You are tendering four,
8 you are offering Defense one through three?

9 THE COURT: Yes.

10 MS. DAVIES: I have no objection.

11 THE COURT: Defense Exhibits 1, 2 and
12 3 are admitted.

13 BY MR. STAFFORD:

14 Q. We notice that this exhibit somewhat
15 has a curve bent to it; correct?

16 A. Yes, sir.

17 Q. How heavy would you think that bar
18 would be?

19 A. One pound.

20 Q. A pound. If I was holding this knife
21 in an offensive manner or coming toward you and
22 you took a swing at me and hit my knife, the bow
23 in that blade would be consistent with this rod
24 hitting it; would it not?

25 A. Yes, it's possible, yes.

1 Q. That also would be sufficient to knock
2 it out of Mr. Allen's hand as reflected in the
3 defendant's statement that his knife was knocked
4 out of his hand; is that correct? Is that what
5 he said?

6 A. That is what he said, yes, sir.

7 Q. And you have observed the video that
8 has been introduced here. Have you seen the
9 video?

10 A. Yes.

11 Q. And right inside Charles' room on the
12 wall at his door there -- is this plugged in?

13 THE COURT: I don't know.

14 MR. STAFFORD: May I plug it in?

15 Q. While we are trying to figure out how
16 to operate this machine, on top of page three,
17 bottom of page two, he describes grabbing the
18 knife and cutting his thumb. He states on the
19 top of page three, "We were scuffling around, we
20 ended up in the open doorway to a large
21 bedroom. I then hit the guy in the head with a
22 pipe that I had. I hit the guy a couple of
23 times, and he fell back on the bed." Is that
24 correct? Is that what he said in his statement?

25 A. Said he fell on the bed, yes, sir.

1 MR. STAFFORD: Does anybody know how
2 to operate the machine?

3 THE COURT: Is that witness still
4 here?

5 THE JUROR: Push that thing over here.

6 MR. STAFFORD: Brilliant. I only
7 have a law degree.

8 Q. Detective, this has been introduced.
9 I assume you recognize that as being Charles'
10 bedroom, right by the door of his bedroom; is
11 that correct?

12 A. Yes.

13 Q. And that is basically the same area
14 that is described in Mr. Rhoades' confession; is
15 it not?

16 A. Yes.

17 Q. And that is where Mr. Rhoades in his
18 statement said he struck the gentleman twice.
19 If I remember his confession. Correct?

20 A. Yes.

21 Q. And striking someone twice with a bar
22 of this nature, the blood splattering that you
23 see here is consistent with someone being hit
24 twice or three times with a bar; is it not?

25 MS. DAVIES: I object. This witness

1 is not qualified as to blood spatter
2 interpretation.

3 THE COURT: Sustained.

4 BY MR. STAFFORD:

5 Q. Do you have any blood spattering
6 expertise?

7 A. None at all.

8 Q. But from looking at that while you
9 were on the scene, you made a determination
10 there was an attack made there; did you not?

11 A. That was my opinion, yes.

12 Q. Still is your opinion; isn't it?

13 A. Yes, sir.

14 Q. Did anybody take any blood samples
15 from there and send them off to the lab for any
16 DNA expert testimony?

17 A. Lab personnel handled all the blood
18 work; I don't know.

19 Q. To your knowledge, was any blood
20 samples taken from there to aid this jury in
21 determining whose blood is on that wall?

22 A. To my knowledge, no.

23 Q. But from reading his statement about
24 the attack being there, that blood supports his
25 statement; does it not?

1 MS. DAVIES: I object to interpreting
2 the statement. The statement is in evidence.

3 THE COURT: Sustained. You may ask
4 him what he saw in an individual room; you may
5 ask him what the statement says about a room;
6 but you can't ask him if it's the same room,
7 among other things that you have implied.

8 BY MR. STAFFORD:

9 Q. And let me show you what has been
10 introduced as number 90, being the lower torso
11 of Charles. And number 77. Number 77 shows a
12 large amount of blood on the second pillow; does
13 it not? In this area. Do you remember that
14 from your investigation?

15 A. Yes.

16 Q. And from your investigation, if one
17 was -- there was a lot of equipment on this
18 side; correct?

19 A. Yes, sir.

20 Q. And would be naturally assumed would
21 be the logical place where one would be sleeping
22 if he slept on the right side of the bed. That
23 would be the side he would be getting in?

24 A. If you are looking at the picture, it
25 would be the left side.

1 Q. Because this is all blocked over here;
2 is that correct?

3 A. Correct.

4 Q. But very little blood is on the pillow
5 where one would be sleeping if he slept on the
6 right side of the bed. All the blood is on the
7 left pillow; is it not?

8 A. It appears to be more blood than on
9 the other pillow, yes.

10 Q. If one was standing here and fell at a
11 45 degree angle onto the bed, his head would
12 have landed on that second pillow; would it
13 not?

14 MS. DAVIES: Object to speculation.

15 THE COURT: Sustained.

16 BY MR. STAFFORD:

17 Q. Using this as a diagram, if one was
18 standing here at this bed, fell at a .45 degree
19 angle, where would his head land?

20 MS. DAVIES: I object to speculation.

21 THE COURT: This all sounds like
22 argument to me.

23 MR. STAFFORD: Judge, I don't mean to
24 argue with the court. I am asking him what he
25 saw.

1 THE COURT: No, that is not what you
2 are asking. You are asking him to speculate,
3 not what he saw.

4 BY MR. STAFFORD:

5 Q. Did the bed appear, from what has been
6 introduced, it would be consistent with a
7 struggle going on in the bed; would it not?

8 A. Can you repeat the question?

9 Q. The way the bed Mr. Allen was in, the
10 way he was wrapped up in it, the way it was
11 arranged, it would be consistent with someone
12 having a struggle in the bed; would it not?

13 A. It would be more consistent with
14 somebody being covered up with the bedding.

15 Q. But either way; it could be either
16 way?

17 A. It could be either way, yes.

18 Q. And going back into the kitchen after
19 the struggle was over -- can you tell the jury
20 did you ever observe the burglar alarm system
21 that was in the kitchen area?

22 A. Yes, I did.

23 Q. Can you describe it very briefly? Did
24 it have multiple lights on it?

25 A. Had one red flashing light.

1 Q. That stayed on continuously?

2 A. While I was there, yes.

3 Q. And if you had no working knowledge of
4 a burglar alarm, you wouldn't know whether it
5 was on or not; could you?

6 A. No.

7 Q. Mr. Rhoades stated in his statement,
8 at the conclusion, or close to the conclusion,
9 that he had taken his boots off; is that
10 correct? I believe page three. He said in his
11 statement that he took his boots off.

12 A. Yes, sir.

13 Q. After the fight was over.

14 A. Yes, sir.

15 Q. And if I can direct your attention to
16 your supplement or your offense report on page
17 104. Ask you to read that. Is it not true
18 that he also told you he wasn't sure when he
19 took his boots off? According to the offense
20 report?

21 A. Correct.

22 Q. And I think from your conversations
23 with the prosecutor this statement started at
24 eight o'clock, you started talking to him around
25 7:30, and approximately can you tell the jury

1 when the statement came to a conclusion?

2 A. If I recall correctly, it was
3 approximately 10:00 p.m.

4 Q. And for those two and a half hours --
5 and I have already asked you, that based upon
6 what you wrote in the offense report and based
7 upon what is in the confession, that Mr. Rhoades
8 did not enter into that house to commit a
9 burglary; is that correct?

10 MS. DAVIES: I object to speculation
11 again.

12 THE COURT: Well, I am not sure what
13 the question is.

14 BY MR. STAFFORD:

15 Q. Based upon what he told you.

16 THE COURT: For the two and a half
17 hours he was with the defendant's if in that
18 time the defendant maintained he had not entered
19 for the purpose of burglary and theft.

20 MS. DAVIES: I object to the form of
21 the question. Again it's asking for an
22 interpretation as opposed to a clear question or
23 revelation of what this defendant actually said.

24 THE COURT: Can you rephrase your
25 question, Mr. Stafford?

1 BY MR. STAFFORD:

2 Q. What Mr. Rhoades said, he did not
3 commit this offense for money, if I remember his
4 statement; is that correct?

5 A. I don't remember exact words. It was
6 something to that effect.

7 Q. And he also told you that he couldn't
8 understand why he did it because he was not a
9 violent person when he started off; is that
10 correct?

11 A. That is correct.

12 MR. STAFFORD: I pass the witness.

13 REDIRECT EXAMINATION

14 BY MS. DAVIES:

15 Q. Sergeant Kennedy, despite this
16 defendant's disclaimers, he did tell you that he
17 took money from Charles Allen's billfold; didn't
18 he?

19 A. Yes, he did.

20 Q. And he also admitted to you that he
21 took the keys, the car keys with him when he
22 left the Allen brothers' home; didn't he?

23 A. Yes, he did.

24 Q. And certainly, based on your
25 experience, is money something that is commonly

1 stolen when a home is burglarized?

2 A. Yes, it is.

3 Q. What about an automobile, is that
4 something that is commonly stolen when a house
5 is burglarized?

6 A. Very common.

7 Q. In fact -- I think I forgot to ask you
8 this earlier -- when this defendant went with
9 you and showed you the location at the Park
10 Hollow Apartments where he had cleaned up after
11 the killing, did he tell you where he had thrown
12 the car keys after he left?

13 A. He pointed out an area where he
14 thought he had, yes.

15 Q. Do you recall where that was? I am
16 showing you State's Exhibit 12. Can you point
17 out for us where he stated he had disposed of
18 the car keys?

19 A. There is an abandoned mobile home park
20 back in here. It was all grown up in weeds.

21 Q. Keep your voice up.

22 A. There is an abandoned mobile home park
23 back here off Smith Street that he said he had
24 thrown them in the weeds somewhere around there.

25 Q. Open field area or weeded area?

1 A. Yes.

2 Q. Did you actually conduct a search to
3 try to locate those keys?

4 A. Yes.

5 Q. Were you successful?

6 A. No.

7 Q. This was a month later?

8 A. That is correct.

9 Q. After the statement was taken.

10 You pointed out on the diagram, I
11 think the other day you pointed out for us where
12 the Park Hollow Apartments are. The fact is,
13 Sergeant Kennedy, just a couple of days before
14 this defendant gave you a statement, you and
15 your partner had been at the Park Hollow
16 Apartments as part of your investigation; hadn't
17 you?

18 A. Correct.

19 Q. Did you talk to a number of people
20 there?

21 A. Yes, we did.

22 Q. As you were talking to people at those
23 apartments, did you put out the word what case
24 you were investigating?

25 A. Yes.

1 Q. Is that the very location where this
2 defendant told you he had been hanging out and
3 hiding out?

4 A. Yes, it is.

5 Q. When you were interviewing this
6 defendant and you described for us the other day
7 -- I won't go into that in detail again -- but
8 he was telling you things and you were typing
9 them; is that correct?

10 A. That is correct.

11 Q. Now, when you were talking to him, did
12 you have with you, even smaller, did you have
13 with you a diagram of the house to consult and
14 ask him to clarify the information that he was
15 giving you?

16 A. No, I did not.

17 Q. Did you have anything of this type --
18 and I am pointing to State's Exhibit 10, the
19 diagram of the interior of the house -- did you
20 have anything there that he was using to explain
21 exactly where he was as he would mention a
22 location in the house?

23 A. No.

24 Q. So, in other words, when he said to
25 you he was in the living room, did you have any

1 way to pinpoint what area within this entire
2 room he was in?

3 A. No.

4 Q. In fact, I believe when you read, I
5 think it was on the third page when Mr. Stafford
6 was questioning you, there is something in that
7 statement about that he and Charles, although he
8 didn't use the name Charles, of course, were
9 near an open doorway to the bedroom. Was there
10 anything about what he said that would clarify
11 for you whether he was suggesting that he was on
12 one or the other side of that open doorway?

13 A. No.

14 Q. In other words, it could have been in
15 the hallway by the open doorway; is that right?

16 A. Correct.

17 Q. Could have been inside the bedroom by
18 the open doorway; correct?

19 A. Correct.

20 Q. Could have been by the master
21 bathroom, if that was an open doorway at the
22 time?

23 A. Correct.

24 Q. Or inside the master bath; is that
25 right?

1 A. Yes.

2 Q. No way for you to know what he meant
3 when he said he was by an open door in that
4 house; is there?

5 A. No.

6 Q. Sergeant, when you take a statement
7 from this defendant or any defendant, do you
8 edit the statement, depending on what aspect you
9 believe to be true?

10 A. No.

11 Q. How do you decide what words go into
12 the statement?

13 A. The subject I am taking the statement
14 from tells me.

15 Q. Have you ever had a situation where
16 somebody tells you part truth and part
17 self-serving information?

18 A. Very frequently.

19 Q. Of course, you also have situations
20 where somebody lies totally?

21 A. Yes.

22 Q. The defendant, apparently, I think
23 from the statement indicated that -- in fact,
24 it's right at the very first line -- "My name is
25 Rick Rhoades. I also go by Steven Ray Leland

1 and David Marcas." Are those the two alias
2 names that he gave you?

3 A. Yes, they are.

4 Q. Did he mention any other alias names?

5 A. Not to my recollection, no.

6 Q. So if he has used any other names
7 other than those, he certainly didn't tell you
8 about those at that time; did he?

9 A. No.

10 Q. Are you familiar with the street
11 lights there on Keith Street? Do you recall
12 whether there is any street lights?

13 A. I do not, off the top of my head.

14 Q. When you searched the house, went
15 through the Allen brothers' home, did you find
16 any guns?

17 A. No.

18 Q. Other than ordinary kitchen knives,
19 did you find any weapons in Brad and Charles
20 Allen's home?

21 A. No.

22 Q. I want to call your attention again to
23 this photograph that you were shown earlier,
24 State's Exhibit 77. It shows it looks like
25 actually three pillows on Charles' bed. And I

1 want to be sure that I understand. From one of
2 the questions that Mr. Stafford asked you, I
3 wasn't quite sure. Can you tell me whether you
4 personally observed blood on each of the three
5 pillows?

6 A. I did.

7 Q. The pillow here on the left as I'm
8 looking at the photograph, in other words, the
9 one on the side of the bed opposite from the
10 music stand, was there blood on that pillow as
11 well as the other two?

12 A. Yes, there was.

13 Q. Sergeant, I want to show you -- if you
14 want me to open it out, I will.

15 A. No.

16 Q. I have marked for identification
17 purposes a bag marked 143. Do you recognize
18 that as containing the bedding from Brad Allen's
19 bed?

20 A. I do.

21 Q. The bag marked State's Exhibit 142,
22 are you able to recognize as the bedding taken
23 from Charles' bed?

24 A. I do.

25 MS. DAVIES: Tender 142 and 143 to

1 defense counsel and offer it into evidence.

2 MR. STAFFORD: I have no objection.

3 THE COURT: State's Exhibits 142 and
4 143 are admitted.

5 MS. DAVIES: Pass the witness.

6 MR. STAFFORD: Very briefly.

7 RECROSS EXAMINATION

8 BY MR. STAFFORD:

9 Q. The fact that Mr. Rhoades' statement
10 and even to the State's evidence there in
11 Charles' room where all the splattering was,
12 assuming using this as the doorway to Charles'
13 room and blood spattering would be here, the
14 length from the doorway to his bed would be
15 about as far as counsel table, maybe a little
16 closer, approximately the same distance, the bed?

17 A. Give or take a couple of feet,
18 approximately the same.

19 Q. Hypothetically speaking, a struggle
20 was here, according to the physical evidence
21 because the physical evidence shows there was
22 blood in the rug area here; correct?

23 A. Yes.

24 Q. Blood here?

25 A. Yes.

1 Q. If the struggle initially started
2 there, the time it would take to get to this
3 section right here would be a matter of seconds,
4 would it not, as I have demonstrated?

5 A. Correct.

6 MR. STAFFORD: No other questions.

7 MS. DAVIES: No further questions.

8 THE COURT: You may stand down.

9 Ladies and gentlemen. I want you to
10 file out and go with the bailiff straight to the
11 elevator at this time. Just go out this
12 doorway. Everybody else remain seated in the
13 courtroom.

14 (The jury is removed from the
15 courtroom).

16 MR. STAFFORD: He can be excused,
17 judge.

18 THE COURT: Who is your next witness?

19 MR. STAFFORD: I assume I am going to
20 call Floyd, but he hasn't seen the slides. Mr.
21 Mc Donald has not seen the slides.

22 THE COURT: He will have the
23 opportunity now.

24 THE COURT: 2:15.

25 MR. STAFFORD: I am excusing him.

1 THE COURT: It's my understanding the
2 defense is excusing this witness. Do you wish
3 to have him on call?

4 MS. DAVIES: Yes.

5 THE COURT: Is Mr. McDonald, if you
6 call him, he is your last witness?

7 MR. STAFFORD: Yes. Unless I put
8 Espinola on.

9 MS. DAVIES: I was asked earlier by
10 the Court to see if Dr. Espinola was available.
11 I know that he is at the M. E.'s office and
12 available, but someone will have to notify him
13 to be here.

14 MR. STAFFORD: I want him to see these
15 slides.

16 THE COURT: Make the phone call. He
17 is on call.

18 MS. DAVIES: I called to verify that
19 he was there, but he could leave if someone
20 doesn't make arrangements.

21 THE COURT: Tell him he needs to be
22 here by two o'clock. I anticipate the jury
23 will be back in the jury room at 2:15.

24 MR. STAFFORD: I would ask, for
25 purposes of the record, some minimal leeway.

1 Again, it's my position that we were surprised
2 by their expert. We had no idea what he was
3 going to testify to. We had not seen any
4 previous.

5 THE COURT: We have been talking about
6 this expert all this week.

7 MR. STAFFORD: Since yesterday. That
8 is when I filed the motion, unless you consider
9 twenty-four hours. That is when I received
10 notice of it.

11 THE COURT: We have been talking about
12 blood spatter testimony for quite sometime.

13 MS. DAVIES: Your Honor, I want to be
14 sure that the record is clear that Sergeant
15 Hoffmaster has been on my subpoena list from day
16 one.

17 MR. STAFFORD: Judge, there has been
18 two hundred people on the subpoena list. That
19 doesn't mean I know what they are going to say.

20 THE COURT: At any rate, if you want
21 the doctor to see the slides you better do it
22 before the jury comes back because we are not
23 going to take a break between Mc Donald and
24 Espinola if you call him.

25 MR. STAFFORD: Again, for purposes of

1 the record, since I have not been aware until
2 today, had no idea what their witness was going
3 to testify to, as to what splatters, et cetera,
4 et cetera, this is being unfair to me.

5 THE COURT: All right. Espinola has
6 been on call all this time. He could have been
7 down here all day long as far as I can tell. You
8 need to leave the room and make the phone call.

9 MR. STAFFORD: I'm going to, but I'm
10 trying to get something on the record. Their
11 cross examination did not complete until
12 11:30. And I have been in direct evidence --
13 anyway, we will get into that.

14 (Jury in)
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1 FLOYD McDONALD

2 was called as a witness by the Defense and,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STAFFORD:

6 Q. Would you state your name for the
7 record, please?

8 A. Floyd E. McDonald.

9 Q. Mr. McDonald, for the benefit of the
10 jury, where are you presently employed?

11 A. I am not employed right now. I am
12 retired.

13 Q. You have such an extensive resume, I
14 don't know where to start.

15 MS. DAVIES: I object to the sidebar
16 remark, Your Honor.

17 THE COURT: Sustained.

18 MS. DAVIES: Ask we proceed in
19 question and answer.

20 BY MR. STAFFORD:

21 Q. Can you give the jury the benefit of
22 your educational background?

23 A. I have a bachelor's and master's
24 degree in organic and biochemistry. I have done
25 some further postgraduate work in the same field

1 toward a Ph.D. Over the years, I have taken a
2 number of specialized courses in different areas
3 of forensic chemistry in different academies and
4 universities around the country.

5 Q. Can you tell the jury where you got
6 your master's degree from?

7 A. I got my master's and my bachelor's
8 both at Sam Houston State University at
9 Huntsville. And did graduate work at the
10 University of Texas in Austin.

11 Q. Did you ever enter Rice University?

12 A. I did during the war. The Navy sent
13 me to Rice for about a year.

14 Q. And starting in 1950, can you tell the
15 jury what your primary occupation was?

16 A. It has been in forensic chemistry. I
17 have been employed by law enforcement agencies,
18 primarily the Houston Police Department.

19 Q. How long were you with the Houston
20 Police Department?

21 A. I was there thirty years.

22 Q. Beginning when?

23 A. 1953 until 1983.

24 Q. From 1983 to present, can you tell the
25 jury basically what kind of -- I know you are

1 retired -- but do you stay active in the field?

2 A. Well, yes, sir. When I retired from
3 Houston -- I live in Pasadena -- and they
4 insisted I come to work for them and set up a
5 crime lab for them, and I did that, equipped it,
6 staffed it and trained the people to take it
7 over and then turned it over to them. But right
8 now, I have been helping them out a little bit
9 because they are shorthanded.

10 MS. DAVIES: Excuse me. Your Honor, I
11 object to the narrative.

12 THE COURT: Sustained.

13 BY MR. STAFFORD:

14 Q. Okay. Can you tell the jury, when you
15 testify, do you normally testify for the State
16 or you normally testify for the defense?

17 A. Well, I don't know about normally.
18 Probably 99 percent of the time that I have
19 testified it has been for the State.

20 Q. And can you tell the jury
21 approximately when it was when I first contacted
22 you to give me assistance in this case?

23 A. Yes, sir. It was day before. I am
24 not sure. A couple of days before.

25 Q. Can you tell the jury, directing your

1 attention to blood splatter, can you tell the
2 jury how long you have been dealing with the
3 field of blood splatter, starting back when?

4 A. Well, it is a field, we have been
5 utilizing blood splattering in criminal cases
6 investigations since 1950.

7 Q. Since 1950, have you been involved
8 with blood splattering techniques and blood
9 splattering investigations?

10 A. Yes, sir, I have.

11 Q. Can you give the benefit to the jury
12 what kind of seminars or courses and things of
13 that nature that qualify you as a blood splatter
14 expert?

15 A. Oh, I guess the first blood spatter
16 seminar I attended was at the FBI Academy back
17 in '63 or '64, something like that. I made a
18 bunch of them since. The last one I attended
19 was last spring in Shreveport, Louisiana.

20 Q. And would you say you have attended
21 numerous or few blood splattering classes and
22 seminars?

23 A. Well, at least a few.

24 Q. Do you consider yourself an expert,
25 blood splatter expert?

1 A. Well, I have certainly utilized it a
2 lot. I am not sure what an expert is, but I
3 have certainly utilized it a lot and come to a
4 lot of final conclusions.

5 Q. Have you testified before a jury about
6 blood splattering before?

7 A. Yes, sir.

8 Q. For the State?

9 A. As far as I can remember, that is the
10 only one, yes, sir. Always for the State.

11 Q. Let me, before I proceed. Have you
12 had an opportunity to read the statement that
13 Mr. Rhoades gave in this particular cause?

14 A. Yes, sir, I did.

15 Q. Did you happen to read the autopsy of
16 Charles Allen in this particular cause?

17 A. I did, yes, sir.

18 Q. Can you tell the jury were the scene
19 photographs supplied to you for you to view of
20 Charles Allen's bedroom?

21 A. I saw them, yes, sir.

22 Q. And did you have an opportunity to
23 review and see the video that was taken in this
24 case?

25 A. Yes, I did.

1 Q. And also the slides that, some of the
2 slides on this projector?

3 A. I saw one or two of them. I am not
4 sure I saw all the slides. I saw all the video.

5 Q. Okay. Now, you haven't had an
6 opportunity to make the scene; have you?

7 A. No, I did not, no, sir.

8 Q. Can you describe, from a blood
9 spattering standpoint, can you describe whether
10 it's better to view a photograph and make a
11 prediction of positioning of bodies or hitting
12 someone in the head, or would it be better to be
13 at the scene to actually see what was left by
14 the act?

15 A. There is no comparison. Obviously
16 it's a lot better to be at the scene. We always
17 insisted that they call us to the scene for
18 things like that.

19 Q. What does being at the scene often
20 show you that a photograph won't show?

21 A. Well, to calculate the angles, for
22 example, at which a drop of blood struck the
23 wall, the floor or whatever you are looking at,
24 you need to measure. You need to take
25 measurements of the stain, the length and width

1 of the stain so that allows you to calculate the
2 angle. You can be much more precise if you can
3 see and actually take the measurements.

4 Q. If you had the measurements, by doing
5 the width and the length, can you basically
6 place where people, or what does it tell you?

7 A. You can tell exactly, by tracing back
8 to the source of a drop, where it came from,
9 take several of them, see where they came from,
10 and when they all came from a single spot that
11 tells you where the person that bled was at the
12 time the blood was spattered.

13 Q. That gives you a good estimation of
14 distance then?

15 A. Exactly. Yes, sir.

16 Q. And in a photograph, you can't make
17 those measurements; can you? It's difficult?

18 A. Unfortunately, no, you can't.

19 Q. If I can direct your attention to Mr.
20 Rhoades' statement where he said the struggle
21 with Mr. Charles Allen began in the doorway.

22 MR. STAFFORD: May I have the lights
23 turned off, judge?

24 Q. And he stated that he struck the
25 gentleman or the guy a couple of times in the

1 head while there. You have had a chance to view
2 this photograph before or this slide before
3 testifying for this jury; have you not?

4 A. Yes, I did.

5 Q. Do you have an opinion, or can you
6 tell the jury what you find in that particular
7 photograph? Or would you like to approach the
8 picture, or however you feel comfortable.

9 A. There is more than one thing. I
10 guess I need to get over there to the picture
11 and show you.

12 MR. STAFFORD: Is that all right with
13 the court?

14 THE COURT: Yes.

15 BY MR. STAFFORD:

16 Q. You have to keep your voice up.

17 A. I kind of got laryngitis as you can
18 tell. I will talk as loud as I can.

19 These spots here are very apparently
20 from an arterial spurt, a small artery that was
21 probably cut. And this across here seems to be
22 the same sort of thing. When an artery is cut,
23 the blood runs out kind of like a kid shooting a
24 water pistol. You get a line of stain. These
25 random spots down here, that seems to be medium

1 velocity spattering. It's as if a blood pool
2 were hit with something and made it splash.

3 Q. The statement said he was hit a couple
4 of times there in the entrance of the doorway.
5 Can you tell the jury, when you hit someone for
6 the first time, do you expect to see a
7 splattering of that nature, or does it take a
8 second hit for a medium velocity splattering as
9 we see on this particular slide?

10 A. No, it takes two. The first time a
11 person gets hit, in this case it was about the
12 head, the first time he gets hit, it doesn't
13 bleed for a second or two, and then there is a
14 lot of blood from the scalp, and it will start
15 bleeding pretty profusely. The second blow will
16 hit the pool of blood and make it splash, and
17 that is what produces the spatters.

18 Q. Okay. And you told the jury that the
19 head area bleeds fairly profusely?

20 A. Oh, yeah. Anybody that has ever cut
21 their head knows you get a lot of blood.

22 Q. Based upon your various thirty or so
23 years of this type of work and study, could you
24 tell the jury, based upon the medium velocity
25 splatters that you see on the wall, are those

1 medium velocity splatters more consistent with a
2 strike coming from a bar similar to the State's
3 exhibit here, or would it be more consistent
4 with a knife in your opinion?

5 A. These down here, these medium velocity
6 splatters, that is more of the sort of thing you
7 see from a blunt object like a bar. A knife
8 stabs; it doesn't cause a splash. You don't
9 get splattering from that. The only way you get
10 splattering from a knife is if you stab hard
11 enough for your hand to hit the body and there
12 is blood on the surface.

13 Q. Can you tell the jury, as far as being
14 more profusely bleeding, would the head area
15 bleed more for splattering effect or would the
16 blows here in the stomach be -- which would
17 splatter the most?

18 A. The bar is not likely to draw much
19 blood to the body. It would be the blows to the
20 head that would cause the splatter.

21 Q. Let me advance this real quick. I
22 have showed you, have I not, sir, the State's
23 exhibits that has been introduced of blood spots
24 that the State recovered of -- how would you
25 describe that, blood splatter or drop or what on

1 the foot?

2 A. It looks like a really, especially
3 this one, looks like a low velocity drop. Like
4 blood dropped onto it. It could be, from back
5 in this area could be a spatter, especially the
6 smaller ones.

7 Q. I previously showed you what has been
8 marked as defendant's exhibit seventeen.
9 Pardon me. State's Exhibit seventeen and
10 sixteen. That being the splattering in the
11 kitchen on the kitchen floor would what you see
12 in sixteen and seventeen be consistent with what
13 is shown in that slide as far as blood drops are
14 concerned?

15 A. Those are pretty obviously low
16 velocity spatters. Low velocity blood just
17 falls. That is pretty obvious low velocity on
18 the floor. And this spot here could also be.

19 Q. And let me show you also another
20 object, I mean another slide. Hypothetically,
21 if I was bloody and there was a struggle, could
22 blood be transferred from my clothing onto a
23 bare leg if there was a struggle?

24 A. If you came in contact with it,
25 obviously.

1 Q. Would that be consistent or
2 inconsistent with blood being transferred from
3 my clothing on to a bare leg?

4 A. Sure.

5 Q. It would be consistent?

6 A. Obviously it is, sure.

7 Q. Also the fact -- if I may point out.
8 Directing your attention to this area. The
9 defendant's statement said he hit him a couple
10 of times and then he fell back on the bed. If
11 that proposition is true, could you tell the
12 jury would you expect to find blood in this
13 area, or would you not expect to find blood in
14 that area?

15 A. Well, assuming from the angle --
16 medium velocity spatters were on this wall back
17 over here by the door -- the man had to be
18 standing just inside the door at that point.

19 MS. DAVIES: I object to the
20 nonresponsive answer.

21 THE COURT: Sustained.

22 A. For him--

23 MS. DAVIES: I object.

24 BY MR. STAFFORD:

25 Q. Okay. Let me suggest this. Let me

1 ask you this. In your opinion, where was the
2 person who got hit standing inside the bedroom
3 according to the blood that you saw?

4 A. The first--

5 MS. DAVIES: Your Honor, I object to
6 the form of the question.

7 THE COURT: In his opinion, where was
8 the person standing?

9 BY MR. STAFFORD:

10 Q. Let me do this. If the person fell
11 onto the bed, taking the route that was
12 described in the statement and based upon the
13 physical evidence, would you expect to find
14 blood in this area?

15 A. If that is all he did from this point,
16 just went back and fell on the bed, not
17 necessarily, no. I wouldn't expect any at
18 all.

19 Q. If he did not receive any blows in
20 that area, would you expect to find any blood?

21 A. Well, that is the point. If.

22 MS. DAVIES: Object to nonresponsive
23 answer.

24 THE COURT: Sustained.

25 MS. DAVIES: Ask the court to instruct

1 Mr. McDonald.

2 THE COURT: Mr. McDonald, please
3 answer only the question being asked.

4 BY MR. STAFFORD:

5 Q. Basically, though, the question is
6 based upon my client's statement, what you see
7 there is consistent with his statement; is it
8 not?

9 A. Yes, it is.

10 Q. Also you read in the confession, did
11 you not, sir, that some of the stabbing and some
12 of the beating occurred in the bedroom, I mean,
13 in the bed itself; is that correct?

14 A. Oh, yes, right.

15 Q. And is the fact that the bedspread is
16 covered around the leg be consistent with a
17 struggle in the bed?

18 A. I would say so, yes, sir.

19 Q. And while the tussling is going on,
20 would it be difficult, in your training and
21 experience, for somebody's leg to get wrapped up
22 in the bedspread?

23 MS. DAVIES: Your Honor, I object to
24 the speculation. This has nothing to do with
25 blood spatter expertise.

1 THE COURT: Sustained.

2 MR. STAFFORD: They brought it out on
3 direct examination.

4 THE COURT: In his training and
5 experience?

6 MR. STAFFORD: Through their expert.

7 THE COURT: Sustain the objection.

8 BY MR. STAFFORD:

9 Q. Based upon the evidence that you have
10 seen doing the video and the State's still
11 photos and the slides, do you have an opinion
12 whether or not all of the attack from start to
13 finish of Charles Allen occurred only in the bed?

14 A. --.

15 Q. Or is that too difficult a question?

16 A. I think in my opinion the physical
17 evidence bears out the statement that it started
18 over near the door and then transferred to the
19 bed. Most of it took place in the bed, no
20 doubt. That is where all the stabbing took
21 place. There is a lot of blood in the bed, all
22 over the bed. That is where the struggle was,
23 and that is where it finished. But the
24 physical evidence indicates to me that it
25 started by the door.

1 MR. STAFFORD: Pass the witness.

2 CROSS EXAMINATION

3 BY MS. DAVIES:

4 Q. Mr. McDonald, you are well aware that
5 Charles Allen is not the only person who was
6 attacked in that bedroom?

7 A. That is true. I know that.

8 Q. And the fact is the physical evidence,
9 the blood spatter, one of the slides certainly
10 indicates that arterial spurting would have come
11 from Brad Allen?

12 A. I have no doubt that is true, right.

13 Q. And certainly there was no, as far as
14 you could see, there was no reason to think that
15 those blood patterns came from Charles Allen; am
16 I correct?

17 A. Not those arterial patterns, no.

18 Q. And certainly Brad Allen suffered
19 numerous stab wounds; is that correct? Based on
20 the autopsy report?

21 A. During the course of the whole affair,
22 he sure did, yeah.

23 Q. In fact, given the arterial spurting
24 and spatters -- in fact, did you look at the
25 slides inside Brad Allen's room?

1 A. No, I didn't see any slides. I saw
2 some photographs from inside Brad's room.

3 Q. Well, let's see. Instead of turning
4 the lights off. Did you and Mr. Stafford have
5 all the photographs out here?

6 A. I don't know.

7 Q. Let me draw your attention -- instead
8 of turning off the lights, I think some of the
9 slides actually are duplicates of these
10 photographs. Perhaps we can use those. Looking
11 at State's Exhibit 70, the door, the hallway
12 door leading into Brad Allen's room. Do you see
13 arterial spurting there?

14 A. I see a lot of just bleeding. It
15 could have been veinous in origin; it could have
16 been from small arteries that would have
17 contributed to it. I don't see any arterial
18 spurting. I see a lot of blood that's being
19 deposited there. I don't really see. You
20 understand I didn't study these. I mostly
21 studied the ones of the other victim.

22 Q. Well, perhaps you can help us by
23 looking at these right now. Would it be fair
24 to say there is some medium velocity spatter
25 there by Brad's door? Here's another one,

1 State's Exhibit 72 shows another view of that
2 doorfacing. Do you see any medium velocity
3 spattering?

4 A. Oh, yeah, surely.

5 Q. Okay.

6 A. I don't necessarily see an arterial
7 pattern. But it doesn't mean some of it
8 couldn't have come from a small artery.

9 Q. But, certainly, even if you do not
10 recognize any arterial spurting, would you agree
11 with me that there is certainly indication, both
12 outside and in the doorframe of Brad's room,
13 some medium velocity spatter?

14 A. Sure.

15 Q. Let me call your attention to these
16 photographs. Look at these for me, please.
17 State's Exhibit 73 in front of you there. And
18 32-A. You weren't shown those before?

19 A. I probably saw them, but I didn't
20 study these.

21 Q. Do you see any indication of any
22 medium velocity spatter there inside Brad's
23 room?

24 A. Oh, yeah, sure. You understand, the
25 guy is covered with blood by now. Almost any

1 time he moves he's going to cause spattering
2 himself. There is so much blood all over him.

3 Q. Now, and you certainly are aware that
4 Brad's wounds were stab wounds?

5 A. Oh, yeah.

6 Q. And they result in this medium
7 velocity spatter?

8 A. I don't think the wounds resulted in
9 that as much as him moving himself. He's so
10 covered with blood, as he moves his arms he is
11 going to cause some spattering.

12 Q. Blood is just squirting out
13 everywhere?

14 A. Yeah, right.

15 Q. There is arterial spurting, of course?

16 A. Some of that undoubtedly is. This on
17 the back of the door looks like it might be.
18 This is smeared by his body.

19 Q. You think that is arterial spurting,
20 or is that just blood that ran down when he is
21 bleeding so heavily?

22 A. I think this is a smear. I think you
23 can't tell what was up here before.

24 Q. What about on the wall?

25 A. Well, this is medium velocity

1 spattering. From what, I do not know.

2 Q. Okay. You have seen no indication in
3 the autopsy reports that Brad was struck with a
4 blunt instrument; did you?

5 A. That is correct.

6 Q. His wounds were all stab wounds?

7 A. Right.

8 Q. And, yet, they did result in medium
9 velocity spattering on these walls?

10 A. We are talking about two different
11 things now. I don't think the wound itself
12 caused the spattering. I think just the
13 movement and the striking against his body, his
14 hands and the assailant's hands and arms. That
15 is what caused the spattering.

16 Q. In your opinion the man is being
17 stabbed, he is bleeding, and as a result you are
18 seeing in Brad's room medium velocity spatter?

19 A. Sure.

20 Q. So, by the same token, Mr. McDonald,
21 certainly Brad's injuries could be causing the
22 medium velocity spattering that you saw inside
23 Charles' room, too, couldn't they, just like it
24 did here?

25 A. It depends on--

1 Q. Would you answer me yes or no?

2 A. I can't answer yes or no. It's not
3 definite.

4 Q. I asked if that is possible.

5 A. Oh, of course. Obviously, anything is
6 possible. Sure, it is.

7 Q. His wounds were capable of causing
8 medium velocity spattering in his room, isn't it
9 also true that it could have been Brad's
10 injuries that resulted in the medium velocity
11 spattering in Charles' room by the door? Is
12 that true?

13 A. That doesn't follow. You have two
14 different situations. By the time he got to his
15 room, he is covered with blood. Almost any
16 move is going to result in spattering. Back
17 where it started, it depends on how many stab
18 wounds he got there in the door.

19 Q. You really don't know that?

20 A. We don't know. It's possible it
21 could have been. But the blunt instrument the
22 second time always produce spattering. It
23 could have been either one.

24 Q. Mr. McDonald, because neither one of
25 us know exactly what happened in that house,

1 just based on the fact that you see arterial
2 spurting and spattering, medium velocity
3 spattering in one room caused obviously by
4 Brad's injuries, isn't it true that that same
5 pattern could appear as a result of Brad's
6 injuries in another room?

7 A. I think you lost me somewhere. We saw
8 arterial -- which room are you starting in?

9 Q. In Brad's room. You just looked at
10 these pictures.

11 A. Yeah, right.

12 Q. As I understood, both the arterial
13 spurting and the spattering?

14 A. We saw both of them in Brad's room.

15 Q. I believe these are the two we were
16 looking at. The doorframe inside and out. Do
17 you see both arterial spurting and medium
18 velocity spattering in Brad's room?

19 A. Apparently so, yes.

20 Q. And the same is true from these two
21 photographs I showed you that are also shots
22 taken inside Brad's room?

23 A. Right.

24 Q. Let's keep these out. Let me find the
25 slide. While we are here, let me ask you about

1 this. Just to jump ahead. Am I blocking your
2 view?

3 A. No, I can see it.

4 Q. You mentioned, in response to Mr.
5 Stafford, that the blood smears on Charles' legs
6 would be consistent with maybe transferring from
7 the blood on his attacker's clothing; is that
8 what I understood you to say?

9 A. That or the blood on the quilt or the
10 bed or anything.

11 Q. Could have been from the sheets and
12 all the blood on the quilt?

13 A. Obviously.

14 Q. Or the sheets?

15 A. Right.

16 Q. Here's what I am looking for. Now, if
17 I understood correctly, when you were answering
18 Mr. Stafford's question, you indicated that the
19 arterial spurting that you see on this slide
20 certainly is consistent with the injuries that
21 you saw on Brad; right?

22 A. Right.

23 Q. And at the same time you are telling
24 us you see some indication of medium velocity
25 spatter?

1 A. Right.

2 Q. Same kind of spattering, that medium
3 velocity spattering -- I don't mean identical
4 spots, but the same type of thing that is
5 apparent on the photographs in Brad's room? Is
6 that correct?

7 A. Sure. Medium velocity spattering are
8 all the same in that respect, sure.

9 Q. So, without blood typing, you really
10 can't distinguish who the medium velocity
11 spattering came from; is that correct?

12 A. Obviously that is correct.

13 Q. In this instance. You can tell who
14 the arterial spurting came from because of the
15 injury?

16 A. Right.

17 Q. There was distinctive injury to Brad
18 that would have caused arterial spurting?

19 A. That is correct, apparently, yeah.

20 Q. But both young men were stabbed, and
21 Charles, in addition, beaten to the point where
22 both of them would have -- you would expect to
23 see medium velocity spattering as a result?

24 A. Well, you would expect to see it
25 sooner or later, of course.

1 Q. And, in fact, you did in these
2 pictures?

3 A. You did see it later on Brad, sure.

4 Q. Obviously, it is more ideal to go to
5 the scene and do your initial investigation
6 there; am I correct?

7 A. Of course, that is correct.

8 Q. But, certainly, obviously, from your
9 testimony today, that doesn't mean it's
10 impossible to reach a conclusion after the
11 fact?

12 A. No, you can reach some conclusions
13 based on the photographs, but there are some
14 things you can't tell. For example, you can't
15 make the measurements that I mentioned. You
16 can't calculate the exact angles. Obviously
17 you can tell some things from the photographs.

18 Q. Right. Now, Mr. McDonald, is it fair
19 to say that the field of blood spatter analysis
20 basically is just common sense refined?

21 A. It's a little more than that. Herb
22 McDonald, when he published his book back in the
23 early '70's, I think he kind of got everybody's
24 attention because he devised a way to actually
25 use the geometric measurements to calculate the

1 exact angle in which blood spatter hits a
2 surface. Before, we were estimating. We would
3 use things we had done in the laboratory. We
4 used standard angles and from the shape of the
5 spot and the length, we would estimate the
6 angle. Now we can actually calculate it to
7 exactly. That is when it kind of got popular.

8 Q. And certainly if you refine it to the
9 extent of being there to do calculations, very
10 precise one, a specialist in that field could
11 tell us even more, but in terms of the -- I
12 don't want to oversimplify -- but in terms of
13 basic pattern, is it the kind of thing, I mean,
14 people track animals, it's the kind of thing
15 that people have known for years, different
16 situations create a different pattern and
17 result, and you just assemble that information,
18 and based on experience and the repetition of
19 the time you see things, you get to the point
20 that you can make pretty good judgments on it.
21 Anybody can look at these pictures and see a
22 pool of blood and say there must have been a
23 fight here.

24 MR. STAFFORD: I don't think that was
25 a question. Testimonial statement from the

1 prosecutor.

2 THE COURT: There was a question. Can
3 you answer it, sir?

4 A. I think a lot of things that are
5 scientific in nature are based on common sense.
6 And if you go back to the route, certainly,
7 obviously, as you see a pool of blood, you think
8 somebody bled. There are things that are based
9 on obvious commonsense things.

10 Q. And most anybody can come in and look
11 at those pictures and just can't be quite as
12 precise or understand the significance of some
13 of the different patterns like somebody who has
14 studied them can?

15 A. I didn't quite understand all of that.

16 Q. Well, I can understand why you
17 didn't. It wasn't a very well-worded
18 question. And I apologize. Basically I guess
19 what I am saying is anybody with good common
20 sense can look at a scene or pictures like this
21 and get a sense of where different aspects of a
22 confrontation took place; is that correct?

23 A. I wouldn't say that is totally
24 incorrect, but it helps also if you have a
25 little training so you understand more about

1 what these things mean.

2 Q. Somebody with more training and more
3 experience who has seen them repeatedly is
4 obviously going to be able to give us additional
5 helpful information about that?

6 A. I would say so, right.

7 Q. So, we will be able to recognize the
8 difference between what is just blood that
9 drips, why one looks different than your
10 arterial spurting, for example, pretty
11 distinctive kind of a pattern?

12 A. I guess that is the sort of thing.

13 Q. And easily recognizable; is that
14 correct?

15 A. And what?

16 Q. Is that easily recognizable, that kind
17 of thing, the arterial spurting?

18 A. Distinguish between those two
19 patterns?

20 Q. Yes?

21 A. Sure, it is.

22 Q. Mr. McDonald, are you enjoying your
23 retirement, or are you still working?

24 A. Pretty much, yeah.

25 Q. I think we met before probably ten

1 years ago right before you left the office.
2 Before you left HPD, I should say. At that
3 time, what was your main area that you were
4 working in? Were you in the serology lab?

5 A. Before I left, I was director of the
6 whole laboratory, so all the areas were under my
7 supervision. I guess I had some training in
8 everything.

9 Q. Okay. Were you still making the
10 scenes at that time?

11 A. Oh, not very often. I usually would
12 send somebody else. I have made -- I guess I
13 have made enough thousands of scenes that I was
14 having other people make most of them.

15 Q. And at this time are you totally
16 retired, or are you just in private practice?

17 A. Well, I still sort of work with the
18 Pasadena Police Department.

19 MS. DAVIES: I pass the witness.

20 MR. STAFFORD: I have no other
21 questions.

22 THE COURT: You may stand down. Any
23 objection to this witness being excused?

24 Mr. Stafford, call your next.

25 MR. STAFFORD: We respectfully rest.

1 THE COURT: What says the State?

2 MS. DAVIES: The State calls David
3 Sanders.

4 MR. STAFFORD: May we approach on
5 that, judge?

6 (The following proceedings were had at
7 the bench:)

8 MR. STAFFORD: I ask for the State to
9 state on the record why she is calling David
10 Sanders back. She has already passed him. I
11 didn't ask him any questions. And this witness
12 definitely didn't raise a fact question that
13 would warrant, under the rules of evidence or
14 the Code of Criminal Procedure, to rebut.

15 MS. DAVIES: Cross of Sergeant Kennedy
16 certainly did.

17 MR. STAFFORD: That was the State's
18 witness, Judge. She had the right to clarify
19 whatever she wanted to with redirect. Under the
20 rules of evidence and rules of procedure, it's
21 improper.

22 THE COURT: She is allowed to call him
23 to rebut.

24 MR. STAFFORD: I object to the next
25 witness being called as being a violation of the

1 rules. It's improper rebuttal.

2 THE COURT: The objection is
3 overruled.

4 (Before the jury)

5
6 DAVID SANDERS
7 was recalled as a witness by the State and,
8 having been duly sworn, testified as follows:

9 REDIRECT EXAMINATION

10 BY MS. DAVIES:

11 Q. For the record, are you the same David
12 Sanders who testified on Monday?

13 A. Yes, ma'am, I am.

14 MR. STAFFORD: May we approach one
15 more time? No, never mind.

16 BY MS. DAVIES:

17 Q. Mr. Sanders, I want to ask you a few
18 questions about the lighting on the house that
19 you constructed at 624 Keith Street for Charles
20 Allen. Can you tell us what kind of exterior
21 lighting was installed there?

22 A. On the front of the house -- do you
23 have the pictures?

24 Q. Yes. Do you remember the number?

25 A. Eight, seven.

1 Q. I assure you they are not in order,
2 but I will try to find them.

3 A. On State's Exhibit 5 -- the elevation
4 of this house was a French elevation, and
5 Charles wanted to really accent --

6 MR. STAFFORD: This is not being
7 responsive.

8 THE COURT: Sustained.

9 A. So he put two lights on the front.

10 THE COURT: Let her ask another
11 question.

12 Q. Tell me about the exterior lighting.
13 What exterior lighting did you put on the house?

14 A. There's two outside French fixtures on
15 the columns to the entrance. There is a soffit
16 fixture or a hanging fixture on the soffit right
17 above the front door. They are on in these
18 pictures, and they were on that night.

19 Q. Is there any street light on Keith
20 Street anywhere near 624 Keith?

21 A. Yes, ma'am, I believe within
22 approximately fifty feet of Mr. Allen's
23 residence there is an overhead street light.

24 Q. Is it on the same side of the street
25 as 624 Keith or across the street?

1 A. It's across the street on the other
2 side.

3 Q. Is the street lighting bright out
4 there in your neighborhood?

5 A. No, ma'am, it is not.

6 Q. So, you have got the exterior lights
7 that you have just described on the front of the
8 house on State's Exhibit 5. And then what kind
9 of lighting did you install in the back of the house?

10 A. On the house itself, there is an
11 outside light at the back door to the utility
12 room. There's two soffit lights at the entry to
13 the master bedroom. And that would be right up
14 under here.

15 Q. You are pointing to the back of the
16 house underneath the chimney as we see it?

17 A. Yes.

18 Q. When you say soffit light, what does
19 that mean?

20 A. The eaves, overhang, the area
21 underneath.

22 Q. So they are not visible from this
23 picture, but the lights are installed outside
24 under that eave?

25 A. Yes, ma'am.

1 Q. And we are referring to State's
2 Exhibit 7; is that correct?

3 A. Correct.

4 Q. Okay. What other lighting is in the
5 back?

6 A. There is a light that Charles had
7 specifically installed at the corner of the
8 studio to light the whole area, the whole back
9 yard. This wasn't something that was on the
10 plans, but the lights that were out there didn't
11 put out enough, and he wanted, for security
12 purposes, he wanted a hallogen spotlight. And
13 it's right here. It's a twelve-foot building
14 there, so that light sits up and shows down on
15 the whole backyard.

16 Q. On the top of the recording studio?

17 A. Yes, ma'am.

18 Q. Is that shown in State's Exhibit 7?

19 A. Yes.

20 Q. I notice there is another light next
21 to the door on the recording studio. Was that
22 also?

23 A. That's more cosmetic. It put out
24 light, but it's like the wattage of a house
25 light. The hallogen up above put out I think

1 three hundred watts is what it's rated at.

2 Q. Now, it looks like there is also a
3 light over here by the what I would call the
4 utility room door?

5 A. Yes, ma'am.

6 Q. On State's 7?

7 A. So there is five lights visible there.

8 Q. Now, well, I see three visible. Where
9 do you see the other two?

10 A. The other two I guess aren't visible.
11 They are underneath the soffit area next to the
12 chimney.

13 Q. The three that are the visible, the
14 hallogen light and the carriage lamps, one by
15 the recording study and one by the utility door,
16 they don't appear to be on on in this picture.

17 A. No, ma'am.

18 Q. What about the soffit lights? From
19 this photograph, can you tell whether they are
20 on or not?

21 A. I can't tell, and I don't think they
22 are.

23 Q. Do you live right next door?

24 A. Yes, ma'am.

25 Q. And I think you had told us on Monday

1 you were having to cut across the backyard
2 rather than go to the street?

3 A. Correct. This is what.

4 MR. STAFFORD: Excuse me. That would
5 call for free narrative. Ask for question and
6 answer.

7 THE COURT: Sustained.

8 BY MS. DAVIES:

9 Q. Do you recall, when you left Charles
10 and Brad's home on Thursday, the twelfth, after
11 the football game, do you recall what route you
12 took to get back to your house?

13 A. Out the utility room door, there is a
14 fence in between our two properties with a place
15 cut out and a board across it that we would go
16 between the two properties with.

17 Q. And what lighting did you rely on to
18 see from Charles' house to your house?

19 A. Once we installed this hallogen light
20 at the twelve foot -- elevation of twelve foot,
21 you really didn't need any other lighting. That
22 one light lit up the whole area. It lit up my
23 house as well.

24 Q. Do you recall, when you left Charles'
25 that Thursday night after the football game,

1 whether that light was on at that time?

2 A. Yes, ma'am, it was. It was
3 approximately eleven o'clock.

4 Q. From your house -- you said it lights
5 up your house -- where is your bedroom in your
6 home in relation to the Charles Allen home?

7 A. You can look out my window and see
8 this view right here. I mean, it's on the side
9 of the house that faces Mr. Allen's house.

10 Q. During the couple of weeks that
11 Charles and Brad had lived in that house, were
12 you aware of whether or not that hallogen light
13 ordinarily stayed on during the night hours?

14 A. Yes, ma'am, ordinarily it did. And it
15 lit up my house.

16 Q. Wouldn't that interfere -- would that
17 make your bedroom light?

18 A. Yeah, we had to close the blinds in
19 the downstairs kitchen area. You know, it lit
20 up the kitchen at night, so we would keep those
21 drapes closed also.

22 Q. Would that hallogen light ordinarily
23 stay on all night, if you know?

24 A. It was his practice to leave it on all
25 night. After I went to bed, I don't know, he

1 might have cut it off, but I doubt it.

2 Q. When you went to bed on the night of
3 Thursday, the twelfth, 1991, as far as you
4 remember, was that light on?

5 A. When I went to bed, I am not sure if
6 it was on or not. When I left his residence at
7 eleven o'clock, it was on.

8 Q. Based on your years of association and
9 certainly in the period of time that you were
10 living close to Charles and Brad Allen, did you
11 know them to have any guns in their house?

12 A. No, ma'am.

13 Q. Were they hunters and keep guns
14 around?

15 A. No.

16 MR. STAFFORD: Your Honor, this is
17 improper rebuttal.

18 THE COURT: Overruled.

19 BY MS. DAVIES:

20 Q. During the years of your friendship
21 with Charles, did you ever know him to step
22 outside the house in his underwear for any
23 reason?

24 MR. STAFFORD: Same objection. It's
25 irrelevant.

1 THE COURT: Sustained. Repetitious,
2 I believe.

3 MS. DAVIES: I don't believe.

4 THE COURT: Do you want to approach
5 the bench?

6 THE WITNESS: I have never been asked
7 that.

8 MR. STAFFORD: Objection under 403.
9 It's cumulative evidence, already been
10 introduced. Improper rebuttal testimony.

11 THE COURT: Objection is overruled.

12 BY MS. DAVIES:

13 Q. Mr. Sanders, during the years you knew
14 Charles Allen, in and out of his house, living
15 next door to him, did you ever see him on any
16 occasion step outside his house in his underwear?

17 A. No, ma'am. I didn't see him inside
18 his house in his underwear.

19 Q. Was Charles a person who would walk
20 around in his underwear?

21 MR. STAFFORD: Objection to relevancy.

22 THE COURT: I haven't heard it yet.

23 BY MS. DAVIES:

24 Q. Based on your years of association, is
25 he an individual who would walk around the house

1 in his underwear?

2 A. Absolutely not.

3 MS. DAVIES: Pass the witness

4 CROSS EXAMINATION

5 BY MR. STAFFORD:

6 Q. How many years have you known him to
7 live by himself? All the time you have known
8 him, he either lived with his mother and father
9 or his wife?

10 A. That is not correct.

11 Q. How many years did he actually live by
12 himself?

13 A. Probably five.

14 Q. Did he live by himself totally alone
15 for five years, no roommate, no female, not
16 living with his parents?

17 A. Never any females. He lived by
18 himself off Bay Area Boulevard I would say for
19 two years by himself. He lived--

20 Q. Let me stop you there. You were not
21 down there with him every day on the two year
22 period?

23 A. No.

24 Q. You don't know how he walked around in
25 his house while he was there by himself; do you?

1 A. No, sir, I don't.

2 Q. Could you tell the jury approximately
3 how many feet there is between your house and
4 Charles' house?

5 A. Approximately a hundred feet.

6 MR. STAFFORD: No further questions.

7 THE COURT: Anything else?

8 MS. DAVIES: No.

9 THE COURT: You may stand down.

10 MS. DAVIES: The State rests.

11 THE COURT: Mr. Stafford, do you close
12 also?

13 MR. STAFFORD: Yes, sir.

14 THE COURT: Both sides close. Ladies
15 and gentlemen, if you would, go to the jury
16 room, we have some matters to take up outside
17 your presence.

18 (Recess; after which, the jury enters
19 the courtroom)

20 THE COURT: We are going to take a
21 recess right now for those of you to go to your
22 vehicles who have vehicles here, those first
23 twelve, and retrieve whatever you might have
24 brought in with you in the way of change of
25 clothes or a toothbrush or whatever that was.

1 I am going to send the bailiff down to the first
2 floor to ride the elevator with you. Go
3 directly to your vehicle, and he will wait out
4 front. You will meet out front and come back
5 in in one elevator and deposit those belongings
6 in a room we have designated in the back. Any
7 questions?

8 For Mr. Sheehan and Mr. Whitten, I am
9 not releasing you yet, but you do not need to
10 retrieve anything from your vehicles.

11 (The jury is removed from the
12 courtroom)

13 THE COURT: All right. In cause
14 number 612408, State of Texas vs. Rick Allan
15 Rhoades. Y'all have a proposed charge in front
16 of you. The only differences in what you have
17 -- and I have spoken to all parties about this
18 -- is the words "if any" added following the
19 word relationship in line three of the first
20 full paragraph on page four, and line nine on
21 page five the word "at" should be an "as". I'm
22 correcting that on the original to be given to
23 the jury in pen.

24 Any objection to my doing that, Mr.
25 Stafford?

1 MR. STAFFORD: No.

2 THE COURT: Ms. Davies?

3 MS. DAVIES: No.

4 THE COURT: Additionally, do you have
5 any objections to the charge, Mr. Stafford?

6 MR. STAFFORD: Yes, Your Honor. My
7 first objection is due to the fact that in my
8 opinion the court allowed in certain background
9 and victim impact information on the deceased.
10 I felt like was introduced in violation of the
11 Rules of Criminal Procedure, Code of Criminal
12 Procedure and the state constitution. As a
13 result thereof, I would ask the court to give
14 this jury a limited instruction that that
15 evidence can not be used by them for any purpose
16 in determining guilt and innocence of my
17 client. I am not suggesting at this particular
18 time what kind of wording the court should use.
19 I will resort and rely on the court's own
20 wisdom, but I would request the court, and more
21 specifically object to the Court's Charge for
22 failure to include a victim impact or background
23 charge.

24 My second objection to the jury charge
25 is for the charge's failure to include threats

1 made to Mr. Rhoades by Mr. Allen, Charles
2 Allen. I think the statement, the only evidence
3 that is before the court, before this jury is
4 that Mr. Allen and my client were having
5 difficulties in the middle of the road and based
6 upon the conversations that they had led my
7 client to believe that Mr. Allen was going in
8 after a gun. According to Detective Kennedy's
9 statement is the way I interpret it, and I think
10 the way the jury interprets it is the door was
11 left open, and the only logical deduction is
12 that the defendant went inside to seek an
13 explanation or an amicable adjustment of the
14 problems that he and Mr. Allen were having. And
15 I think the court should charge -- or I object
16 to the charge for failure to charge the jury on
17 threats made to the defendant. And I think that
18 charge would be given even -- and that charge
19 would be independent of the fact that the court
20 has already charged on self-defense. Would also
21 ask for a charge on the right to seek an
22 explanation and the right to seek an amicable
23 adjustment between the two parties. We object
24 to the Court's Charge for failure to include
25 these requested items.

1 THE COURT: Objection is overruled.

2 MR. STAFFORD: We also ask the court
3 to include a charge, or we object to the charge
4 for failure to identify a criminal transaction
5 because, without a definition of that, the jury
6 will not have -- criminal transaction is not a
7 common, everyday usage term. The jury does not
8 know what a criminal transaction is because they
9 are lay people and not skilled in the law. We
10 would ask the court to identify the term
11 criminal transaction that it uses throughout the
12 charging portions of the jury charge.

13 MS. DAVIES: There is no statutory
14 definition of criminal transaction. It would be
15 improper for the court to give one.

16 THE COURT: I am not going to define
17 criminal transaction in the charge.

18 MR. STAFFORD: That request is
19 overruled?

20 THE COURT: It's overruled.

21 MR. STAFFORD: We also object to page
22 number ten, judge, on the issue of voluntary
23 intoxication.

24 THE COURT: You are objecting to
25 inclusion of what is on page ten of this

1 proposed charge?

2 MR. STAFFORD: Yes, as not being
3 supported by the evidence. It's only there to
4 inflame the minds of the jury. That would lead
5 them to believe that the reason our client
6 committed the offense, if he did commit the
7 offense, was because he was drunk. Unnecessary
8 comment on the weight of the evidence.

9 THE COURT: I don't see page ten as
10 being a comment on the weight of the evidence.

11 MS. DAVIES: I certainly don't
12 either. The evidence in the defendant's
13 statement he says he had had ten beers. And one
14 of the issues is certainly intent. I think it's
15 an appropriate instruction and one that the
16 statute provides for.

17 MR. STAFFORD: He also says, Your
18 Honor, I wasn't drunk.

19 THE COURT: Also, on page four, there
20 is another insertion of the words "if any" three
21 lines from the bottom of the page after the word
22 "force." Any objection?

23 MR. STAFFORD: No, Your Honor.

24 MS. DAVIES: No objection.

25 MR. STAFFORD: I assume the court

1 overrules my objection to page ten?

2 THE COURT: Yes.

3 MR. STAFFORD: Other than that, I
4 think it's peachy.

5 (Jury in)

6 THE COURT: Ladies and gentlemen, both
7 sides having rested and closed, I am now going
8 to charge you in the case of the State of Texas
9 vs. Rick Allen Rhoades.

10 (Charge read)

11 THE COURT: At this time, under
12 article 36.29 (d) of the Code of Criminal
13 Procedure, the charge of the court having been
14 read to the jury, Mr. Joseph E. Sheehan and Mr.
15 Larry W. Whitten are discharged.

16 Y'all may wait in the courtroom. You
17 may listen to this. You may go home. You are
18 totally discharged. If you would like to sit
19 there, that is all right, too. What's your
20 pleasure?

21 THE JURORS: Sit here.

22 THE COURT: Ms. Davies.

23 MS. DAVIES: Thank you.

24

25

1 OPENING ARGUMENT OF THE STATE

2 BY MS. DAVIES:

3 I know you all already knew the wheels
4 of justice turn slowly, but I doubt if you
5 realized how long they could grind on some
6 days. This is one of them. Hang in here with
7 us. It's important.

8 I am going to use a little bit of my
9 time right now to talk about the charge that the
10 judge just read to you. I want to walk through
11 it with you and talk about some of the legal
12 issues, then I am going to sit down, and Mr.
13 Stafford and Ms. Kaiser will get to present
14 their argument. I am going to save most of my
15 time, especially in terms of talking about the
16 evidence, for the conclusion. But this is a
17 lengthy charge, and what I want to do is try to
18 cut through some of it. I know certainly all of
19 you and all of you collectively could struggle
20 with it, get back there and spend an awful lot
21 of time reading through it, but I think, if we
22 walk through it and kind of put it in
23 perspective, it will make it simpler for you.
24 Basically, as you go through that charge, the
25 judge is telling you there are some lesser

1 includeds in there. Remember the first day --
2 some of you, it has been months ago -- when you
3 came down for jury duty that first day, we
4 talked about the possibility of lesser included
5 offenses. That is the kind of charge we have
6 got. And if you follow the instructions the
7 judge has given you in the sequence they are
8 given, it tells you where to start. I will go
9 over it page by page. There are a lot of
10 definitions; but in terms of deliberating on
11 your actual verdict, it tells you, you start
12 with capital murder. You first consider whether
13 or not this defendant is guilty of the
14 intentional killing of both Brad and Charles.
15 You also will consider whether he was justified
16 in killing either one of them under the concept
17 of self-defense. Okay? Now, if you reject
18 self-defense at that point and if you reach the
19 unanimous verdict that, yes, he is guilty of the
20 capital murder of those two young men, it's
21 guilty of capital murder and you are through,
22 you do not go through the other steps of
23 considering all those lesser included
24 offenses. It is only if, after you consider
25 capital murder, you are not convinced that it is

1 capital murder or if for some reason you decide
2 self-defense applies to either or both of the
3 young men, then the next step -- I have got them
4 numbered -- the next step in the sequence is you
5 consider: Okay, you have decided it's not
6 capital murder, look at the next crime. The
7 next one you look at is was this just murder of
8 Brad, intentionally or knowingly killing Brad by
9 stabbing him. And then it says: All right, if
10 you are convinced it's murder, now consider
11 again was it self-defense, was it a justified
12 murder under the concept of self-defense. And
13 if you conclude that it was, I mean, you could
14 decide either way. You could decide it's
15 murder, guilty of murder, or it was self-defense,
16 not guilty. Regardless of your decision, if you
17 get that far, then you would go to the third.
18 Now you are going to look at Charles, killing of
19 Charles, and consider was it an intentional
20 murder of Charles and then was it self-defense,
21 was it justified. It's only if you have
22 rejected murder because of self-defense or
23 whatever, only then would you get down to the
24 last choice, number four, of voluntary
25 manslaughter. And remember voluntary

1 manslaughter is the offense -- and I am going to
2 read from these definition a little more -- that
3 is where you are acting under sudden passion
4 from an adequate cause. Second degree
5 murder. Actually I wrote self-defense here.
6 Self-defense doesn't even apply because if you
7 get down to voluntary manslaughter you have
8 rejected self-defense at the murder level.

9 I don't think your deliberations are
10 going to be as difficult in terms of going
11 through each of the steps. The evidence is
12 overwhelming in this case, ladies and gentlemen,
13 that this defendant is guilty of capital
14 murder. Capital murder alone. And that is
15 where your verdict will be. That is where you
16 will stop in going through this process. In
17 fact, the evidence is so overwhelming, I have to
18 say some of you probably wondered, you know,
19 hey, we got this confession, we know he did it,
20 it's there. I mean, why did we have to sit
21 here for another whole day and we listened to
22 DNA evidence. You know, I am a little
23 compulsive, I guess, about trying to dot every I
24 and cross every T, but I can't be too careful.
25 If there was any chance that any one person had

1 ever read or heard of a story of some screwball
2 confessing to a crime that he didn't commit
3 because he read about it in the newspaper --
4 this is capital murder -- I don't want anybody
5 back there worrying about that. You don't have
6 any concern in this case over whether you have
7 got the right man. You know who killed Charles
8 and Brad Allen. It's this defendant. So now
9 what you do is look at the law and apply the
10 evidence that you have to the legal concepts
11 that the judge has given you.

12 The first page of this charge is all
13 definitions. It defines capital murder, murder,
14 voluntary manslaughter. Let's talk about
15 voluntary manslaughter for a minute. I will
16 tell you it's very tempting to just disregard
17 those. It seems so absurd that anyone would
18 seriously argue that this would be voluntary
19 manslaughter as to Charles, but I can't take a
20 chance, I am too cautious, I am not a risk
21 taker, I have to talk about it. This charge
22 from the judge tells you what voluntary
23 manslaughter means. It means that you
24 intentionally or knowingly killed Charles is
25 what it applies to. And you do it, or this

1 defendant did it, is how you would have to
2 decide under the immediate influence of sudden
3 passion arising from an adequate cause.

4 Adequate cause is defined. Adequate cause is a
5 cause that would commonly produce a degree of
6 anger, rage, resentment or terror in a person of
7 ordinary temper, not a hothead ex-con, a person
8 of ordinary temper, sufficient to render the
9 mind incapable of cool reflection.

10 Now, the reason that lesser included
11 charge is included by the judge is simply
12 because of the things that this defendant says
13 in his statement. It doesn't make any
14 difference whether they are true or not. You
15 are going to see, as these arguments progress,
16 you already know, I know, from the questioning,
17 Mr. Stafford and I are going to disagree
18 strenuously over whether everything that is in
19 that statement is true, and especially about
20 that original confrontation in the street, or in
21 front of the house. But the fact that the
22 defendant said that in his statement is the
23 reason this is in the charge. You do not, I
24 mean, first off, let's assume, let's give him
25 every benefit of the doubt. Worst case scenario

1 from my point of view you believe every word he
2 says in that statement. And if you believe
3 every word he says, if you believe that Charles
4 Allen stood with crossed arms and stared at this
5 defendant -- and, please, folks, ask for the
6 statement -- if you believe that that is what
7 Charles Allen did, and that in Houston, Texas,
8 in 1991 or 1992, that is an adequate cause, that
9 is the kind of thing that a person of ordinary
10 temper would commonly become so enraged over
11 that it would justify or downgrade their actions
12 as being an adequate cause to respond by
13 following the man into his home and butchering
14 him, we are in big trouble, if that is the way
15 you believe. And I don't believe any of us here
16 would accept that concept even if you believe
17 his statement word for word. Voluntary
18 manslaughter is not there. You are not going
19 to even get there.

20 Let's keep on going through this
21 statement. I mean, this charge. There are more
22 definitions. Describes intentionally,
23 knowingly. And at the bottom of the second
24 page begins the paragraph that we call the
25 charging paragraph. Very important

1 paragraph. This is the charging paragraph on
2 capital murder. Tells you that if you find, if
3 you are convinced by the evidence -- and I
4 believe you will be, that is what the evidence
5 shows, that this defendant intentionally killed
6 Charles by stabbing him with a knife or, either
7 one, or by hitting him in the head with a bar,
8 doesn't make any difference which one, and you
9 also believe that in the same criminal
10 transaction he killed Bradley by stabbing him
11 with a knife, he is guilty of capital murder.

12 Then the charge tells you, okay, and
13 if you think that it's capital murder, now
14 consider self-defense. And it defines for about
15 six paragraphs here what is self-defense.
16 Ladies and gentlemen, keep this in mind, please,
17 first off, the use of force against another is
18 not justified in response to verbal provocation
19 alone. Now, where this whole thing -- and,
20 again, for the moment, I am going to assume for
21 the worst case scenario you believe every word
22 of that statement that this defendant gave --
23 this whole thing is just verbal provocation.
24 There is not any suggestion in any of this that
25 Charles Allen did anything more than fold his

1 arms and maybe tell him to get his ass on down
2 the road when he is loitering around at 2:30 in
3 the morning. Verbal provocation alone certainly
4 does not justify using deadly force. Beyond
5 that, though, for a person to be justified in
6 using deadly force against another, this
7 defendant would have to be able to show, or the
8 evidence would have to show, I should say, that
9 this defendant first used the degree of force
10 necessary. I mean, talk about degree of force
11 necessary, when you remember that blood bath
12 that was there. He has to show that he was
13 responding to unlawful force. Now, again, worst
14 case scenario -- believe his story. Even if
15 Charles Allen reached for a knife to protect
16 himself or Brad used his fist or anything, my
17 God, if they had a gun and reached for it they
18 still would have be acting lawfully. They
19 would have been within their rights. And it's
20 only if he is responding first to unlawful
21 force. It's not there. Charles and Brad Allen
22 are in their home acting lawfully, no matter
23 what force they used to protect themselves from
24 this intruder. Not only would he have to show
25 that they were using unlawful force, the

1 evidence would have to show that he used only
2 the degree of force that was immediately
3 necessary and that a reasonable person in his
4 circumstances wouldn't have retreated. Wouldn't
5 have retreated? We are talking about somebody
6 who, if you are to believe his version, somebody
7 gives him the bad eye from their home at 2:30 in
8 the morning, he is in the street, all he has to
9 do is keep on walking. A reasonable person
10 would retreat. Even if by impulse they went to
11 the door and they see somebody in there, a
12 reasonable person would and could retreat
13 through that open door. Self-defense -- he
14 cannot show you that any aspect of this evidence
15 shows self-defense, that this killing is
16 justified under the concept of self-defense. It
17 is not there. So you can eliminate self-defense.

18 So, as you go through those, that is
19 one step. It's gone, folks. You know, if we
20 can not protect ourselves in our own home from
21 somebody like Rick Rhoades, we are in big
22 trouble, we are in worse trouble than any of us
23 ever dreamed.

24 And when you read that definition of
25 self-defense, I hope you will notice. I meant

1 to count how many times it reads, uses the word
2 reasonable, because every definition, every
3 aspect of it talks about reasonableness. And
4 it's true, it's repetitious, and it says
5 repeatedly you look at the circumstances from
6 the position of the defendant; however, when you
7 read those definitions, it doesn't mean, again,
8 that you embrace the view of a hot-headed
9 convict, ex-con. There is a definition on page
10 three about in the middle of the page that is
11 very important in that regard. It defines
12 reasonable belief. It's meant a belief that
13 would be held by an ordinary and prudent person
14 in the same circumstances as the defendant.
15 It's true, you evaluate all of this from the
16 point of view, from the position the defendant
17 is in, but you view it as an ordinary and
18 prudent person would. Reasonableness is the key.
19 I think you will all agree that as we went
20 through that evidence we didn't see any
21 reasonable conduct on the part of this defendant
22 from the minute this thing got started until the
23 end. We saw nothing but savagery.

24 It goes through, as I said, all the
25 permutations, starting with capital murder and

1 was it self-defense and then the lesser
2 includeds. When you get to the end and the
3 verdict page, there is every variation. The
4 second one is the one you want. The second one
5 is where: We, the jury, find the defendant,
6 Rick Allan Rhoades, guilty of capital murder as
7 charged in the indictment. That is the one
8 that applies here, and that is the one I believe
9 you will use.

10 You know, the evidence is so clear, as
11 I have already said. You know not only from his
12 statement but from the DNA testing we have got
13 the right man. By the way, DNA testing makes
14 me think, as far as the possibility of
15 pinpointing where Charles' blood is and where
16 Brad's blood is in the house, I want you to
17 remember you heard from Holly Hammond from the
18 DNA lab, remember we had a blood sample from
19 Charles, and it was so degraded because of the
20 circumstances of his death that they couldn't do
21 DNA testing on Charles. And you will also
22 remember when Doctor Espinola testified he told
23 you Brad's blood had hemolyzed, and, so, they
24 couldn't do a blood sample and even typing.
25 That is why we had to use those medical

1 records. Both young men had type O blood. So
2 blood typing and DNA testing won't separate it
3 out. That is why the blood spatter is the only
4 way, by differentiating from the type of wound,
5 that we can try to sort out the scene and shed
6 some light on what really happened in that house
7 that night. We will talk some more about that
8 later. But as far as the things I have to
9 prove to prove capital murder to you, identity
10 is no issue. You know who did it. It's Rick
11 Rhoades. You know it was in Harris County,
12 Texas. It was on September 13, 1991. You
13 know, my God, it's the same criminal
14 transaction. It was all, I mean, the two young
15 men were seen alive at the same time, at eleven
16 o'clock. They are found together the next
17 morning. It's a blood trail that doesn't stop
18 from one young man to the other. And his
19 statement tells you he did it all at the same
20 time. You know how it was done. He does tell
21 you, admits he stabbed and beat Charles, he
22 stabbed Brad, the weapons are there, the wounds
23 are there. There is no question about who got
24 killed and how. Basically there is no real
25 issue here. If there is one at all, it's

1 intent. You know, I guess Mr. Stafford will
2 get up here and say he didn't mean to kill
3 them. Well, remember we talked about this, too,
4 intent can be formed very quickly. When you
5 talk about whether one intentionally killed, it
6 doesn't mean he had to enter that house with the
7 intent to kill. In fact, I mean, why he went
8 into the house? Why he killed those two young
9 men? I know we would all love to know. Ask
10 Mr. Stafford to tell you why he would do a thing
11 like that. Why. An answer that makes some
12 sense because the one he gave in that statement
13 certainly doesn't. But as far as intent goes,
14 at some point, for whatever reason, he went in,
15 and I think -- and I am going to go into it in
16 more detail -- I think the evidence supports the
17 conclusion he went into that house to burglarize
18 is what he did.

19 MR. STAFFORD: I object, Your Honor.
20 That is not supported by the record, not
21 supported by anything that has been introduced
22 in the case other than the fantasy of the
23 prosecutor. I object to that.

24 MS. DAVIES: It is a reasonable
25 deduction from the evidence.

1 MR. STAFFORD: I ask the court to
2 rule.

3 THE COURT: Overruled. And could be
4 a reasonable deduction from the evidence.

5 MR. STAFFORD: Thank you.

6 MS. DAVIES: You don't have to decide
7 what he intended to do when he went into the
8 house. The only thing you have to decide is
9 that at some point, whether he decided before he
10 went in or after he got in there, he intended to
11 kill. And when you look at the circumstances
12 of the slaughter, he uses multiple weapons,
13 multiple blows -- and we are going to go into
14 that in more detail on the evidence, too --
15 there is no question he intended to kill. And
16 that is why it's capital murder because he
17 killed both Brad and Charles. A reasonable
18 deduction that he went into that house to steal,
19 to burglarize. You have an ex-con who had been
20 on the street less than twenty-four hours. And
21 whatever happened that at some point he decided
22 it was necessary to kill, ladies and gentlemen,
23 this is not a man who was looking to go back to
24 the pen that soon. He was going to do whatever
25 it took to get out of that house without getting

1 caught. And if it meant butchering Charles and
2 then Brad in turn, that is what he would do.
3 He did it.

4 Please remember that the truthfulness
5 of anybody, any witness, any evidence is your
6 decision. That statement, we will both be
7 talking a lot about it, we are going to disagree
8 about it, you are the ones who will decide.
9 Remember you can believe all or part of that
10 statement just like you can believe all or part
11 of anything any witness tells you when they come
12 in here. That statement I want you to keep in
13 mind, please, as you listen to Mr. Stafford's
14 argument and to mine, that statement came from
15 an ex-con multiple times, he tells you in there
16 been to the pen four times, twice in Indiana,
17 twice in Texas. An accomplished liar who has
18 managed to go to the pen under different names
19 and pull that off. The statement came from a
20 man who, even when he is admitting that he
21 committed a capital murder, a double homicide,
22 he is going to rationalize just like anybody
23 else. It's human nature. We all know that.
24 Even when you admit something bad that you have
25 done or something that you don't want to have to

1 admit, most folks try to put themselves in the
2 best light they possibly can. He had a full
3 month to think about that statement before he
4 gave it, from September 13th to October 11th.
5 This isn't that he got caught running out of the
6 house and immediately had to come up with a
7 statement; he had been thinking for a month
8 about how, I mean, he knew what he had done,
9 what kind of justification can he come up with?
10 He didn't do a very good job, frankly. I don't
11 know who could. That is why we would like to
12 know why. I hope we will find out.

13 THE COURT: Mr. Stafford. Ms.
14 Kaiser.

1 OPENING ARGUMENT OF THE DEFENSE

2 BY MS. KAISER:

3 May it please the court.

4 Ladies and gentlemen of the jury.

5 Mr. and Mrs. Rhoades.

6 The Allen family.

7 Ms. Davies.

8 On October 11th, 1991, Rick Rhoades
9 made a big decision, a decision that would alter
10 the course of his life. That decision came at
11 a time about two in the morning when he came
12 face to face through the window of a door of an
13 elementary school out in Pasadena, Texas, with
14 Sergeant Lopez from the Pasadena Police
15 Department. There is Rick inside with his
16 little blue bag with a VCR. Sergeant Lopez
17 catches him in the act. I don't think either
18 one of them expected to see each other. And he
19 immediately hooks it around the building and
20 orders him to come out. Rick could have taken
21 the course that he had taken in the past in his
22 life on several different occasions, set down
23 that little bag, turned 180 degrees, taken it on
24 down the hall and out another exit. Y'all saw
25 Sergeant Lopez. He didn't look in the best of

1 physical conditions. He was a little bit
2 rotund. I don't think we have any difficulty
3 thinking that Rick might be able to outrun him
4 and get away from the situation. But, instead,
5 Rick sat there for a moment, walked outside that
6 door, laid face down on the ground and thought I
7 can't live like this anymore. I can't run
8 anymore.

9 MS. DAVIES: Your Honor, I object to
10 arguing outside the record.

11 THE COURT: Stay in the record, please.

12 MS. KAISER: My recollection of Rick's
13 statement to Sergeant Kennedy later is that that
14 was the reason that he turned himself in. He
15 was taken into custody, and within ten hours is
16 asking the Pasadena police to get in touch with
17 the Houston Police that are in charge of the
18 murder of some brothers in Houston. He wants to
19 talk to them, has some information. According
20 to their own admission, the Houston detectives
21 had absolutely no leads on the case. One month
22 after, and they did a lot of investigation.
23 They put a lot of foot work into the case, as
24 Sergeant Kennedy testified. They were
25 nowhere. They go out and talk to Rick. He is

1 talking so fast they have to stop him so they
2 can read him his rights. He says I can't live
3 like this anymore. I got to get something off
4 my chest. I thought about killing myself. I
5 just can't do it anymore. Here it is. And he
6 proceeds to talk with them for about half an
7 hour and then reduced that statement to
8 writing. Didn't ask for a lawyer, although he
9 certainly knew he was entitled to one. He had
10 been through this situation before. There was
11 absolutely no reason for Rick Rhoades to lie in
12 this statement. He wasn't caught running out of
13 the door of the Allen house. That, of course,
14 would be some type of situation where you are
15 caught and one might think that a person might
16 have to be more justified or that might be an
17 indicator that they are trying to make some
18 excuses or paint themselves in the best light
19 possible. Ms. Davies would like you to think
20 that Rick gave this statement but then he puts
21 in all this self-serving stuff, all this
22 self-defense stuff just to kind of cover his own
23 butt. He could have done that real easily.
24 All he had to do to cover his butt was just to
25 keep his mouth shut. Nobody was looking for

1 him. There was no word on the street that,
2 hey, the word is out, Rick Rhoades, we are
3 investigating this murder. All he had to do
4 was keep quiet just like he had done for the
5 last month. Absolutely no reason in the world
6 for him to be less than truthful in this
7 statement. Although, certainly, Sergeant
8 Kennedy told you defendants give statements all
9 the time that contain some truth and some lies.
10 But you have to look at the circumstances that
11 that statement was given, where they already
12 kind of suspect, did they already know that,
13 were they caught in the act? And I agree with
14 Ms. Davies I would like for y'all to ask for
15 this statement because I want you to see how
16 every single sentence in this statement is
17 supported by the evidence. And why in the world
18 we should just believe 99 percent of it and just
19 choose to disbelieve one or two little parts of
20 it is beyond me. There are a lot of indicators,
21 although small, that would indicate the
22 truthfulness of the statement. Ms. Davies is
23 right, there is going to be a lot of conflict on
24 how the altercation first began, whether or not
25 Charles was ever in that open doorway at the

1 front door. Well, according to all the
2 testimony that we have heard from this stand,
3 the master bedroom was totally unlit, mini
4 blinds drawn, no lights on, curtains on the
5 window. If you will look at the photographs,
6 you will see the hallogen light that Mr. Sanders
7 referred to that points in different directions
8 and the bedroom window. Nothing to think that
9 that room wasn't totally dark. And, so, how --
10 and the State would have you believe that Rick
11 Rhoades slipped into this house and butchered --
12 her word -- Charles Allen in his bed. Never
13 left that room, never got out of that bed. I
14 want you to ask yourself how on October 11th of
15 1991 did Rick Rhoades know that Charles Allen
16 had brown hair. In the dark, all hair colors
17 look identical. How in the world would he have
18 ever known that? I submit to you it's a small
19 point, but it's those little points, that is
20 what you are going to have to look at. They are
21 telling. They are very telling.

22 Rick says that he goes into the house,
23 that he rushes in, the door was left open, he
24 rushes in to confront. He thinks that Charles
25 has gone in for a gun. Well now, there is a

1 reason to believe that someone might be fearful
2 if they had some kind of angry words and the
3 person at the door says, well, I will tell you
4 what I am going to do and then runs into the
5 door and leaves the door open. That certainly
6 isn't indicative that this person is
7 frightened. They didn't close the door and
8 turn that little latch in back of them. They
9 didn't go and dial 911. You leave the door open
10 if you are planning on coming back. So, Rick
11 is a confrontational guy, he is going to go in
12 and set this situation straight, and goes in,
13 and what does he see? He sees Charles Allen
14 with the open drawer and pulling out a knife.
15 And Charles Allen confronts him. Rick has
16 picked up a weight bar right inside the doorway
17 inside the weight room. Has the weight bar in
18 his left hand. Now, the State wants you to
19 believe, of course, that this never happened,
20 that Rick Rhoades went in there, found a knife
21 in the kitchen drawer, went through and
22 butchered Charles and Bradley Dean Allen, did a
23 reconnaissance again on the kitchen and got some
24 more knives, that he pointed at this one drawer
25 that has the blood drop. How did Rick Rhoades

1 know where the knife drawer was in the kitchen?
2 There was one drawer that had drops of blood on
3 it. That was the knife drawer. Was that just
4 a lucky guess or was that drawer already open?
5 Rick also points, says in his statement that
6 Charles came out with this knife, that he had
7 this weight bar in his left hand, he tried to
8 grab the knife with his right hand. Of course,
9 the State the offered a theory that the way that
10 Rick got the cut on his right thumb, just above
11 the joint of his thumb here -- and y'all can
12 look at the pictures of that -- that that was
13 during the stabbing, that somehow the knife
14 slipped and he cut himself during that. When
15 you go back to the jury room, you have a right
16 to take the evidence with you. I would like
17 for y'all to hold that knife and see what
18 fits. You hold the knife in this direction and
19 it slips, it doesn't cut you down here. It
20 cuts you way up here. If you happen to be
21 holding the knife like this and it slips, it's
22 cutting the bottom of your finger here.
23 However, if somebody is coming at you and you
24 are trying to disarm them, this is exactly where
25 you are cut, in exactly that position.

1 Ms. Davies is right, the State's
2 evidence is overwhelming. For three days -- and
3 she does, she crosses her T's and dots her I's
4 -- and we have heard an abundance of
5 testimony. The only problem was that all of
6 those facts were admitted to, they were conceded
7 a year ago. What she doesn't have is evidence
8 to dispute what Mr. Rhoades has said in these
9 few little areas that she chooses not to believe
10 this confession. Brings you a little bit of
11 evidence that says he was going to sleep that
12 night because he hadn't been to sleep yet. He
13 had gotten off his shift, hadn't gotten his
14 sleep, he was going to go to bed and then get up
15 and work the next day. I think you can look at
16 the evidence and see, that on the toxicology
17 report Doctor Jachimczyk and Doctor Espinola in
18 the laboratory findings on Charles Allen on the
19 drug screen, they show the presence of caffeine
20 in this body. He had been there, everybody had
21 been over there, they had a little football
22 party that night. He had been up for, gosh,
23 twenty-four hours at that point. Worried about
24 the sticky floor in the recording studio, keeps
25 getting up to go out and check on the drying

1 pattern of the floor, had been drinking coffee
2 all through the game, got a caffeine buzz and
3 just couldn't get to sleep. Just could have
4 been one of those times when you are almost too
5 tired to go to sleep. We will never know why
6 Charles Allen got back out of bed that night.
7 Perhaps he went out to check on the floor in the
8 studio. Perhaps at that point he saw Rick
9 Rhoades walking down the street, decided to go
10 back through his house and open the door and
11 just see what happened. There is no question, I
12 think, that the evidence that the State
13 presented that aggressive behavior was unlike
14 Charles Allen; but then again, he perhaps acted
15 a little bit out of character this particular
16 night. He had been up for a long time, he
17 hadn't had any sleep, and sometimes people's
18 reactions are a little bit different than they
19 would be normally. They also offered this
20 evidence that he doesn't walk around the house
21 in his underwear. Never has. And they bring in
22 friends and family members to set that up. Even
23 if he has the habit of not walking around in his
24 underwear, always wearing his favorite robe, I
25 believe we can all imagine how somebody getting

1 up in their own home in the middle of the night
2 and either going to the bathroom or going to
3 check on a floor wouldn't necessarily put on
4 your robe like you might if you were walking
5 around in the daytime with people coming and
6 going in your house. You feel a little bit
7 more comfortable walking in your underwear to do
8 something in your own home like that.

9 And then they point, they rely on this
10 blood spatter testimony. What happened where.
11 And I think that all we got from both of the
12 blood spatter experts is that, gee, you really
13 can't tell. You can almost concoct whatever
14 story you want and it can be supported. The
15 mere fact that Charles Allen had no blood on one
16 leg and one foot could mean that he was in bed
17 and had it covered up. Could equally mean that
18 he was standing up and the first couple of blows
19 didn't create much splatter. When he fell back
20 on the bed in an unmade condition the leg got
21 under cover. Equally consistent.

22 There are other indicators of
23 truthfulness in the confession. They bring all
24 this evidence. A couple of people say they were
25 kind of lax about locking their front door.

1 This is the reason that Rick was able to gain
2 access to the front door. They pretty much
3 acknowledge there was absolutely no forced
4 entry. Entry must have been through the front
5 door. So, okay, we will concede it was unlocked
6 unintentionally. However, when David Sanders
7 came over that next morning right before he
8 found the bodies and found the back door locked,
9 he didn't even try the front door. He went a
10 hundred feet through a fence, over a board, back
11 to his house to get a key and come back without
12 even trying the front door. Perhaps that is
13 because David Sanders knew that normally that
14 front door was locked because perhaps Charles
15 and Brad, like a lot of people, kept their front
16 door locked. It's not a door that a lot of
17 people use very often. Many people come and go
18 through the back door. They pull their cars
19 up, that is where the kitchen is, that is the
20 heart of the house, and that is where everybody
21 enters and exits. The front door could almost
22 be painted on in a lot of houses. Perhaps that
23 is why he didn't even try the front door because
24 he knew he shouldn't even bother. That front
25 door didn't need a key to lock from the inside.

1 Just had a little latch. Could have easily been
2 turned by Charles that morning when he closed
3 that door, if he closed the door and locked it
4 behind him, but he didn't. He ran back and
5 left the door open.

6 Now, about the confrontation itself.
7 Granted, it started as a staredown, but it
8 progressed to a little bit more than that. I am
9 not going to sit here and try to tell you that
10 anyone of you in the same situation would do the
11 same thing if somebody confronted you or even
12 acted like they were threatening you, made some
13 kind of a threatening comment and you were
14 outside and they were in their home, chances are
15 good that most of you would do just exactly like
16 Ms. Davies suggested, keep on trucking right
17 down the road. But that is not the test. You
18 have to look at this whole situation through the
19 eyes of the defendant, through the eyes of a
20 twenty-eight-year-old man that had spent most of
21 his adult life in prison. And imagine and
22 think, if you will, detach yourself from your
23 own personal responses and try and imagine and
24 put yourself in the feet of somebody who has
25 lived in a prison atmosphere who can't ignore

1 conflicts, who isn't given the luxury of just
2 ignoring and going on down the road. Problems
3 need to be addressed when you are in prison.
4 They are addressed quickly. If you look at it
5 from that perspective, it makes a little bit
6 more sense.

7 I want you to, when you get back
8 there, to spend a lot of time on this statement
9 and go through here and see how just about each
10 and every statement in there was supported by
11 the evidence, the State's evidence. We get to a
12 part that talks about after the death and how at
13 some point Rick took off his shoes and then ran
14 back down the hallway and went to the kitchen
15 and got some more knives out of the drawer
16 because he didn't know if he was still in a
17 fearful situation and ran back down the hallway
18 again. Sergeant Kennedy testified that the
19 actual sequence of when he took off his shoes
20 was in question. Rick didn't remember exactly
21 when he took off his shoes, but somewhere around
22 that time, but he couldn't put it in exact
23 sequence of going in the hallway and coming back
24 and everything. So there might be a few
25 discrepancies on that part. You can't expect

1 somebody to remember every single detail in
2 something that happens this quickly, over a
3 month ago. But go through it and see how it
4 matches up. Remember that this self-defense
5 issue, since it has been raised, the burden is
6 on the State to disprove it, not just a little
7 bit but to disprove it beyond a reasonable
8 doubt. And I don't think the little nebulous
9 reasons that they have tried to set out, well,
10 he doesn't normally walk around in his
11 underwear, and normally they have a hard time
12 keeping the doors locked comes anywhere close to
13 the kind of evidence that it is going to take
14 for the State to meet their burden. And I
15 submit to you that they have not proved capital
16 murder in the indictment as charged.

17 THE COURT: Mr. Stafford.

18 MR. STAFFORD: How much time do I
19 have?

20 THE COURT: It's going to take a
21 second. Twenty-nine minutes.

22 MR. STAFFORD: Thank you, Judge.
23
24
25

1 CLOSING ARGUMENT OF THE DEFENSE

2 BY MR. STAFFORD:

3 I am not going to take very long. I
4 think Ms. Kaiser covered a lot of the things. I
5 was thinking if I was the prosecutor what would
6 I argue in this case. I wouldn't argue
7 motive. I wouldn't argue anything. I think I
8 would just show you the pictures. There is one
9 picture that has been introduced, and it's
10 exhibit number 91. Right here. You haven't
11 seen it. Out of 150 exhibits, you haven't seen
12 this one. I objected to it. Supposedly had
13 some evidentiary value to let y'all see how the
14 blood was flowing. And my heart goes out to the
15 Allen family because it's never nice, never
16 pleasant to lose two of your sons. And you had
17 a chance to look at this lovely family. That's
18 tragic. I mean it pulls every heartstring that
19 you have. It almost brings tears to your
20 eyes. And if we are gauging guilt and innocence
21 about the number of loved ones and friends that
22 have been here daily in support of the State, in
23 support of the Allen family, then there would be
24 no reason for you to leave the jury box. There
25 would be no reason. Death is never pretty. We

1 talked about this on voir dire. Regardless of
2 whether it's the most justified act in the
3 world, the end result is still horrible. And I
4 will stipulate -- I saw this gentleman's face
5 when we started passing the pictures of the
6 crime and y'all's reaction. Y'all went into
7 immediate shock. It is a horrible thing. It's
8 a horrible deed. I could spend thirty minutes
9 and slowly take each one of these photographs
10 and let you look at them one more time. Your
11 objectivity is totally gone out the window.
12 Totally gone. Do you really care why he did
13 it? Do you really care where he came from? Do
14 you really care what his motive is because you
15 are looking at the dastardly deed that was done.
16 How can you be objective? How can you be? I
17 mean, we spent some awful quality, bonding time
18 with y'all, she did, showing you, going through
19 each detail, rightfully so, because you should
20 be able to see what went on there. But then,
21 we, under the constitution and the laws of the
22 State of Texas, at least have a chance for you
23 to sit without emotion, without passion and
24 review our evidence. Don't I have at least that
25 fair shake? She told you why she didn't object

1 to certain things. I tell you why I let in the
2 the fact that he is an ex-con. I didn't have
3 to let y'all know that he just got out of
4 prison. I didn't have to let you know that he
5 had been to prison. Y'all would be sitting here
6 today thinking this is possibly a one-time
7 offender who did it. Never would have known
8 that. I tell you why.

9 MS. DAVIES: I object to arguing
10 outside the record.

11 THE COURT: Stay within the record,
12 please.

13 MR. STAFFORD: Y'all were confronted
14 with what? A statement that said I was out in
15 the middle of the street and a guy gave me
16 eyes. That still doesn't make much sense.
17 Still makes no sense at all. But there are
18 certain things that do make sense because I
19 think Ms. Kaiser hit it very heavily and very
20 strongly, there was only one way that my client
21 knew he had long hair, brown hair because poor
22 Charles was standing, unfortunately, on this
23 bloody Friday, the thirteenth, out under the
24 porch light. And maybe the fact you wouldn't go
25 in there, maybe none of us would go in there and

1 maybe nobody else in the world would have gone
2 in there, but again I think, based upon the
3 evidence, there is nothing that would make you
4 believe he went in there to kill anybody, with
5 the intent to cause harm to anybody, with the
6 intent to commit burglary. There is no
7 evidence that this was a stake-out. There is no
8 evidence that this was premeditated. So he was
9 stupid enough to go in and say: Hey, I want to
10 confront him. Hey, I want to know why he was
11 giving me the evil eye. So he did that. Based
12 upon the pictures, that you know, that you see,
13 the lights were on, if you believe the State's
14 theory, why in the world would a person commit a
15 burglary with all the lights on? Cars in the
16 driveway. Motorcycle in the back. If that was
17 your intent. We know he was chicken enough,
18 when he got caught, to go into a closed school
19 with nobody there. It takes a lot of nerve,
20 takes a lot of brave to go into a house that you
21 think someone is there. Nothing in there that
22 would indicate he is that type of person. But
23 what I want you to think about is, based upon
24 the State's evidence, undisputed, that standing
25 in that entryway looking back in the kitchen you

1 could see in there. Take the State's
2 photographs. They are there. You can see it.
3 Straight shot through there. You can see. He
4 says my path was cut off. I couldn't get out.
5 I am not going to try to pinpoint him other than
6 he made the statement I couldn't get out. He
7 had my path cut off and he was coming toward me
8 with a knife. And you can take the sorriest,
9 meanest, yellow dog, tick-ridden dog in the
10 world and he has one basic instinct, and that is
11 to survive. Whether you want to follow her
12 thought that he had no right to be in there.
13 Say he didn't have any right to be in there. All
14 of a sudden, it's either me or him. What do
15 you do? I suggest that there was nothing
16 unlawful -- maybe you wouldn't have been there
17 where Mr. Rhoades was, but there wasn't anything
18 unlawful. Our Honor didn't charge you that him
19 going into the house was unlawful. There is
20 nothing in the charge that says that Mr. Rhoades
21 being in the house is unlawful. There is
22 nothing there.

23 And another interesting thing which I
24 think is supported by the evidence and even the
25 police officer, how else could that dent get in

1 there other than by this being hit there, which
2 is consistent, undisputed, that Mr. Allen had
3 this knife in his hand. Rightfully so. I think
4 as Ms. Kaiser brought out on the
5 cross-examination of the doctor that you take
6 with Brad the patterns that are in the back is
7 consistent with a struggle. Consistent, totally
8 in opposition of State's theory that both of
9 these or both of these attacks occurred in the
10 bed. Or if you don't believe that, that one
11 started in Charles' bedroom and went down, which
12 I think the blood spatters support that. You
13 heard Floyd McDonald come in today, which I
14 called. He was my expert. He looked at the
15 same things that their expert looked at, and
16 each of them admit to you that the best type of
17 evidence is there at the scene, collected at the
18 scene. Don't base a verdict, don't base your
19 decision upon some photographs that the DA had
20 someone come in four months ago to try to
21 support her theory of the case because I think
22 it's basically, if you look at the confession,
23 it's undisputed that the attack on Charles
24 started there in the doorway and makes logical
25 sense, as I have demonstrated over here, that

1 getting from that doorway to the bedroom is a
2 matter of seconds. That explains why there is
3 no blood on the floor. That explains why most
4 of the blood is on that right pillow where the
5 head hit. Totally consistent with it. Again,
6 you may not have walked into that house. But
7 the jury charge doesn't say he didn't have the
8 right to be in there, either.

9 And another thing I want you to
10 remember -- the thing that bothers me the most
11 is that because we have taken so much time, by
12 drawing each hit, each stab, it makes it seems
13 like this whole thing acted as an eternity, that
14 just went on and on and on. But I think, once
15 you put everything in perspective, I think
16 logically, based on the evidence, that probably
17 this whole thing happened in less than two
18 minutes. Everything happened quickly. It
19 wasn't a long, drawn-out affair. The end
20 result, I agree with you, is totally
21 devastating. Devastating. Devastating. But I
22 ask you, as Ms. Kaiser asked you, when you
23 listen to the State's argument of going over
24 each of these blows, the blows are bad. I agree
25 with you. And I think any person who feels

1 threatened and struggling for their life and
2 feels like they are going to die, they don't
3 stop and think about what kind of havoc they are
4 creating. They are fighting to survive as
5 showed by this trauma that happened to this
6 knife and by the consistent patterns on the back
7 of Brad. What I am asking you to do is to find
8 my client not guilty of capital murder. And I
9 think you should find him guilty of something.
10 I am not suggesting that you shouldn't. I
11 think you should. I think he deserves to be
12 found guilty of something. I just don't think
13 you should find him guilty of capital murder.
14 I have no objection if you slip down to the
15 third and fourth charge and find him guilty of
16 murdering both of them. There is a provision
17 right there that says you can find. Or
18 involuntary manslaughter. I just don't think,
19 based upon the evidence, that this was a
20 continuous murder during a criminal
21 transaction. Something happened that he was
22 defending his life. Something happened to make
23 him do that because we know, based upon the
24 testimony of Kennedy, that he verified that this
25 man did not have a violent background. All of a

1 sudden something happened to make him do that.
2 I want you to find him guilty of something. He
3 deserves to be found guilty of something. But
4 don't find him guilty of the ultimate, horrible
5 crime of capital murder. Find him guilty of
6 murder. Find him guilty of anything but
7 capital murder because I think, based upon the
8 evidence, based upon the law Our Honor has given
9 you, you would have to do that because you have
10 taken an oath to uphold the law and the
11 evidence. I know the State has a lot of
12 fantasies about what happened, but none of them
13 are supported by the evidence. Not one iota is
14 supported by the evidence. And if you follow
15 your oath, you are going to have to find him
16 guilty of either involuntary manslaughter or
17 murder, not capital murder. I thank you.

18 THE COURT: Ms. Davies.
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25

1 CLOSING ARGUMENT OF THE STATE

2 BY MS. DAVIES:

3 I guess that is what makes the world
4 go 'round. Different people see things
5 differently. For a minute there, I thought Mr.
6 Stafford was going to suggest this man isn't
7 even guilty of trespass. Whether he was
8 lawfully in the house isn't the issue. I mean,
9 that is absurd, that it was permissible for him
10 to go in the house. That is not an issue
11 here. In terms of the self-defense concept,
12 there is no self-defense. He would have had to
13 be reacting to unlawful force. And anything
14 Brad and Charles did to protect themselves was
15 lawful, not unlawful.

16 I have to answer a couple of things.
17 How did he know, how did he know that Charles
18 had long, blonde hair. Well, several
19 possibilities. I mean, for one thing, if he was
20 hanging around that neighborhood all evening --
21 and we know that Charles is going out all
22 evening. He comes in from water skiing, he goes
23 in and out checking on the floor, there are
24 friends and family in and out. To say nothing
25 of the fact that there is a month in between the

1 murder and the statement. What? This guy
2 doesn't have access? He tells you how he
3 watched on TV at the Chinaman's store about the
4 murders. What? He doesn't see things on TV
5 like the rest of us? That is in his
6 statement. There are a lot of ways he could
7 know about the long, blonde hair. But,
8 obviously, because he was on top of the man
9 stabbing and beating him to death. You know,
10 whether the lights are on or off, we will never
11 know which room had lights on. But, you know,
12 it's not like total blackout eclipse just
13 because you don't have a light on in a
14 particular bedroom or particular room in the
15 house.

16 You know, if you take every word in
17 his statement as gospel truth, he is still
18 guilty of capital murder. He admits every one
19 of the elements of capital murder. Now, I have
20 to disagree with Mr. Stafford. We did put in
21 evidence to refute some of the things in this
22 statement. And whether there is something that
23 specifically refutes every little detail, again,
24 you are the finders of fact. You decide every
25 word in there, which is believable. And you

1 look through the physical evidence, like I tried
2 to do in some of the questioning, and we are
3 going to do now, you look to that and you decide
4 does this fit. Does this make sense. Does it
5 sound believable.

6 Let's look at some of the problems,
7 some of the refuting evidence. For example,
8 how he gets into the house. His entry into the
9 house. Now, in his statement he says the door
10 was open. Now, when Sergeant Kennedy is typing
11 and when this defendant is talking, they are not
12 drafting a legal document. That is an
13 ambiguous word. Is it open? Well, technically
14 it probably means the door is standing wide
15 open, but people don't talk in that precise
16 terms. It could mean the door was standing wide
17 open, or it could mean the door wasn't locked.
18 And we will not know for sure. Well, of
19 course, either way, it's not locked. But I want
20 you to think about what makes sense. If, I
21 mean, this is why this business of confrontation
22 on the porch, the staredown where Charles runs
23 back into the house. If that happened, if
24 Charles saw this guy out in the street and was
25 concerned enough to size him up -- we have all

1 had that experience. And I know some of us who
2 live alone, you see somebody who doesn't look
3 like they belong around your neighborhood, maybe
4 you are driving off or you are coming in alone
5 at night, you check them out pretty good. If
6 that happened, if Charles gives him a look, now
7 you go back to this statement, he doesn't say
8 Charles threatened him. He says that he,
9 Rhoades tells Charles, according to him, come on
10 out here and we will settle it. He invites
11 Charles out into the street to fight. And he
12 says the guy turned around and ran back in.
13 Where is it? "When I told him to come outside,
14 the guy ran back in the house." Now, if
15 somebody is alarmed and runs back in the house
16 because some stranger lurking around the house
17 has challenged them to come out and fight, you
18 think they are going to leave the door standing
19 open? They are not only going to close the
20 door, they are going to turn that bolt lock to
21 secure the door. And the fact that the door
22 wasn't locked -- and we know it wasn't because
23 there is no forced entry -- is a very strong
24 indication that if Charles at any point went in
25 through that door, I mean, he didn't lock the

1 door behind him because he wasn't aware of any
2 threat. It just doesn't fit. Very unlikely.

3 This business about the boots. You
4 know, he tells you in the statement he knew this
5 is a problem. When he is leaving, he notices
6 his bloody footprints going down the driveway.
7 He knows this is a problem. He is aware of that
8 is one piece of evidence they have. And, so,
9 when he tells them about these boots -- here
10 again, this is his rationalization. Now, when
11 did he take off the boots? He describes it
12 somewhere after this attack, this battle that he
13 is engaged in, he is not sure exactly why,
14 Sergeant Kennedy, or exactly when, but at some
15 point he says he took off those boots. And
16 after the struggle. After the attack. Folks,
17 think about that. Doesn't fit. First off,
18 those feet, those socks, the bottom had to be
19 saturated, soaked with blood. There are
20 footprints into the kitchen, out of the kitchen,
21 back through the house because you know -- and
22 we will check it out with all the other physical
23 evidence -- he goes all the way back in the back
24 master bedroom again, back through the house,
25 out, still leaving bloody footprints all the way

1 down the sidewalk and out to the street. Now,
2 how did his feet get saturated with blood? I am
3 not going to show these bloody pictures in your
4 face. I know they are awful to look at. But
5 please ask for them and look and verify for
6 yourself what I am telling you on most of these
7 things. Where could he have gotten his feet --
8 if he had his boots on throughout that attack,
9 there would have been blood on the boots. And
10 maybe, with such a blood bath, maybe a little
11 would have run down, I mean, he wasn't walking,
12 his boots weren't this full of blood in the
13 bottom to sock the sole of his socks and that is
14 what left the prints. He got the blood on his
15 socks after he took the boots off. Now, think
16 about where the concentrations of blood are in
17 that house. And David told you he pulled the
18 carpet out. There were two areas where the
19 blood was saturated through the carpet. One of
20 that was in Brad's room. I know you will
21 remember for a long time how bad it looked in
22 Brad's room. But you know what? Remember he
23 lost his knife. That is why he ran from Brad's
24 room. Brad managed to slam that door. And this
25 is the point where somewhere in here he took off

1 the boots. Because it darn sure wasn't in the
2 middle of that struggle. I mean, you know,
3 when Brad came running in to help his brother
4 Charles: Excuse me just a minute, I believe I
5 am going to take my boots off now. No. This
6 thing that has been described as happening so
7 fast -- and I am sure it did once it got going
8 -- no, the boots were already off before the
9 attack began because once Brad slammed that door
10 he couldn't get back in there to walk around in
11 enough blood to pick up that much blood. And
12 where is the other place that there is this big
13 concentrated pool of blood where you could soak
14 it up with your socks like that? Would have
15 been at Charles' head. Well, you know that
16 isn't where he did that. That music rack is in
17 the way. It would be obvious from the pictures
18 if he had gone in there -- why would he do
19 that? He would have to climb over that stuff
20 and stand in it to get that much blood on his
21 feet. He got his feet soaked on the bed and
22 maybe partly when he was attacking Charles and
23 mostly in Brad's room. You can see the blood
24 is wet and thick on that bed. That is where a
25 lot of the fight was going on. So what does

1 that mean? What is the significance? It means
2 he took his boots off before any confrontation
3 started. Now, why would you do that? If
4 someone has just, as he wants you to believe,
5 had a confrontation with somebody, challenged
6 them to a fight, is so afraid that they are
7 running into their home to protect themselves,
8 does he stop and take off his boots? No. I
9 mean, this alarmed person. Now, if somebody
10 goes into somebody's home at 2:30 in the
11 morning, why would they take off their shoes?
12 Do you think it's because he noticed that, oh,
13 this is a new house, wouldn't it be a shame to
14 get mud on the carpet? I think not. This man,
15 the only logical, reasonable deduction from the
16 evidence is that when he tried that front door
17 -- remember, remember, I mean, they are making
18 a big deal that he has a hundred dollars in his
19 pocket. Hey, he gets out of the pen less than
20 twenty-four hours before, and I believe Sergeant
21 Kennedy says they give them something like two
22 hundred dollars, in less than twenty-four hours
23 he has blown half of his money on beer, video
24 games and taxi fare. He doesn't have a place
25 to live. Not planning real well. He needs a

1 little more cash. He needs to replenish his
2 supply. He tries a door as he is walking that
3 neighborhood, and you take off your boots
4 because you are going to tippy-toe around,
5 sneaking through that house trying to find
6 something to steal. Money. Nothing big. He
7 doesn't have a car. What is he going to carry
8 out? Cash. Small things. Hey, it's brazen
9 all right, I will agree. Brazen because, if he
10 did walk to the back or look like he says he did
11 -- in fact, in his statement he says he ran to
12 the back of the house, so he knows there are
13 people there. But isn't it strange they want
14 you to think that this brash, confront every
15 slight, this brazen ex-con who stands up to any
16 imagined insult is too timid to burglarize a
17 house? Won't be the first time you ever heard
18 of somebody's house getting burglarized when
19 they were in it. He took off his boots because
20 he was sneaking around in that house. And what
21 is the first thing he does? Now, he tells you
22 even in his statement -- and I certainly
23 wouldn't say that the sequence or every word of
24 it is accurate, but isn't it interesting that
25 this person who wants you to think he is going

1 in, he says first thing he does -- and you read
2 it. Remember he says he walks in here and he
3 doesn't see anybody. Hey. Safe now. No
4 danger. If his story is true. Hey, oh good,
5 he doesn't have a gun, I can leave now. That
6 isn't what he does. He tells you that he
7 doesn't see anybody and he goes through this way
8 to the hallway and sees the weight room. And
9 what does he do? He picks up a bar. Now, why
10 does someone do that? The first thing he has
11 done is pick up a weight bar. Now, he tells you
12 he goes back to the living room. Now, he could
13 have had this sequence as confused as he was
14 confused over when the boots came off. It
15 could just as easily have been that he goes to
16 the kitchen first and picks up a knife, then
17 goes through the bedroom and picks up a bar. I
18 mean, why? Who knows? Regardless, he is
19 armed. He is armed, and he is looking for
20 trouble. Now, maybe he is looking for things
21 to steal, but he has seen the cars. In case
22 anybody wakes up, he is armed.

23 Now, those pictures -- I want you to
24 remember Charles had been up for thirty-six
25 hours. He had worked that late shift,

1 remember. He had gone water skiing. He knew
2 he had to get up early the next morning to work
3 on the studio. This was a man who, when he went
4 to bed, he would be sleeping. He has a buzz
5 because he had a trace of caffeine in his
6 blood. Defendant says I had ten beers but I
7 wasn't drunk. I mean, that shows you just how
8 meticulously honest and precise he is in his
9 statement. Now, he tells you one way or
10 another, whichever room he has gone to first, he
11 tells you he has armed himself, and he claims
12 that he is in this living room when the
13 confrontation begins with Charles. Wants you to
14 ignore the fact that you can see blood on the
15 pillow where Charles' head would have been as he
16 is lying sleeping. He says the confrontation
17 starts in that living room. Ladies and
18 gentlemen, I want you to think about this. In
19 this picture, you can barely see some of that
20 blood spatter that is on the doorframe right by
21 -- this is Brad's bedroom door, the closed
22 bedroom door, and here's some of that spatter.
23 And you think about the layout of that house.
24 Brad Allen is sleeping in this room. If the
25 fight that the defendant described, he says --

1 how does he do it? Wait a minute. I want to be
2 sure I get this right. The guy starts -- he
3 says that Charles starts coming towards me, he
4 cut me off at the door. Poor guy, he couldn't
5 get out now because Charles cuts him off. So I
6 guess that means he is suggesting they are
7 somewhere in here in the living room. And then
8 he wants you to believe -- let's see, where is
9 it? He says, "We started scuffling in the
10 hallway." And then later on he says they end up
11 in the bedroom. With that scenario, their
12 confrontation begins in the living room, goes
13 right here by Brad's door, down the hall to the
14 bedroom. Consider, will you, for that to be
15 true, Charles Allen, who has just confronted a
16 stranger in his house at 2:30 in the morning,
17 who is alarmed and supposedly has armed himself,
18 Charles Allen, who knows his brother is right
19 here in this bed, you think there wouldn't have
20 been enough noise and commotion and screaming
21 and hollering on Charles' part that Brad
22 wouldn't have been alerted to get up and help
23 his brother? There is no way these two men
24 fought from the living room, down the hall, to
25 the bedroom, and then to have him tell you from

1 his statement the real fight only gets under way
2 when Charles falls on the bed. Brad would have
3 been in there much sooner. With the two of
4 them, maybe they would both still be alive
5 today.

6 THE COURT: Ten minutes.

7 MS. DAVIES: The reason there wasn't
8 enough noise to awaken Brad is because Charles
9 was sound asleep. Charles is taken by
10 surprise. Now, it's reasonable to conclude if
11 Charles woke up, maybe with Mr. Tippy-toes there
12 looking through the house and Charles awakens
13 and he is not going to get caught. He starts
14 beating Charles first -- I mean, if Charles
15 awakened at all, he never got a chance, based on
16 this physical evidence, the blood on that bed,
17 to do anything more than try to sit up. You do
18 not need a blood spatter expert. I think
19 anybody can look at the way Charles is -- he is
20 under the covers. This is a person who was in
21 bed. If he had fallen on the bed after the
22 attack had started, he would be on top of the
23 covers. You can compare that to the way the
24 spread looked in Brad's room. It's covered
25 with blood on top where he was on top, fell out,

1 got out, whatever. Charles and that leg.
2 Ladies and gentlemen, that leg speaks. Those
3 two young men, you know from those horrible
4 pictures, they were covered with blood head to
5 toe, arms, legs, both of them covered with
6 blood. Except that leg and foot never got out
7 from under the cover that Charles was sleeping
8 under. Now, it's obvious he thrashed and rolled
9 and fought on that bed after the initial
10 surprise of the attack. But he never had a
11 chance. And when it finally got loud enough and
12 went on long enough Brad comes running in. And
13 I never suggested Brad was attacked in his bed.
14 And none of the evidence did. You have got that
15 arterial spurting. You know he is the only one
16 who has that type of injury. And he comes into
17 that room to see what is happening, what is
18 wrong with his brother. And this guy, he says
19 from his statement, he says the other guy came
20 in and yelled, I jumped up. I got off him.
21 He was on top of the bed stabbing Charles. Oh,
22 another thing. How do we know Charles was in
23 the bed? I nearly forgot this. You know, he
24 never explains this. He explains that the
25 reason he left his attack on Brad is because in

1 the fight, the knife, he lost the knife. He had
2 to run. That gave Brad a chance to close the
3 door. This bar that he beat Charles in the
4 head with time after time. Remember it was
5 under Charles' body. How did he lose it? Now,
6 in the struggle as they are rolling back and
7 forth on the bed he lost this, too. He doesn't
8 explain that. He uses the bar, he uses the pipe
9 to beat Charles until he loses it. And then he
10 turns to the knife. Whether Charles was so
11 stunned from the blows to the head that it gave
12 him a chance to run for the knife or whether he
13 initially walked into that room armed with both,
14 he uses them both. The fact that he uses the
15 weapons repeatedly on both men, stabs, slash,
16 beat, more than one weapon, all those
17 circumstances we know what his intent was. And
18 you know what? If we couldn't be sure then, I
19 want you to think about it. This man who has
20 just slaughtered Charles, who is lying there on
21 the bed in the condition that you see him,
22 gurgling, to use his words, Charles is no
23 threat. And then Brad -- some of these stabs
24 wounds are in the back and the chest, which you
25 know they are both rolling back and forth and

1 fighting. Brad, you suppose he was trying to
2 get to that phone that was in his room? You can
3 see it in the picture. I was just trying to
4 get away. I was just trying to defend
5 himself. Regardless, he cuts on Brad until he
6 loses the knife. Backs out of the room,
7 according to his statement, Brad slams the
8 door. Hey, is he out of there now? He has just
9 slaughtered two men, one is gurgling, one is
10 whining, dying behind the door, to use his
11 words, is he out of that house now? No. He
12 goes in this kitchen -- and the pictures show
13 you his prints going in and out of the
14 kitchen. By the way, this drawer, if it was
15 already open I don't know why he had to touch it
16 here when he left the blood drops. That is not
17 the knife drawer. That is the wrong drawer.
18 If you look at the pictures, the knives are in
19 the butcher block that is on the counter in the
20 kitchen. And what does he do? He gets not one
21 but two knives. Now, why would one do that?
22 Except for the fact that there are two men that
23 he is hearing death rattles. Is he out the
24 door? No. He goes back with a knife in each
25 hand, one for each of them. Just one problem.

1 He can't get in Brad's room because Brad is
2 dying holding the door shut. He did all he
3 could. Does he leave then? No. Goes back to
4 Charles' room. And you know, you know that
5 Charles is dead, and he knows it then. He goes
6 back there to Charles' room. He has two
7 knives. And, you know, at some point we know
8 that one of the Allens type O blood is on this
9 bar. Why do you suppose he used it?

10 MR. STAFFORD: There is no evidence he
11 used it. I object to her suggesting that.

12 THE COURT: The jury has heard the
13 evidence.

14 MR. STAFFORD: Ask the court to rule
15 on my objection.

16 THE COURT: It's overruled.

17 MS. DAVIES: There is blood on this
18 bar. How did the blood get there? Did he heft
19 it up? Well, no, the knife is better. I want
20 you to look at the pictures. It's so
21 interesting. You know, we know, because this
22 other knife, we know this is the one that he
23 actually killed them with. But these other two
24 knives he went back to the kitchen for. This
25 little bit of blood on the tip. Now, how did

1 that get there? How did that get there? He
2 goes back to check whether Charles is dead yet
3 or not. And for some reason we end up with just
4 a little bit of blood on the end of the knife.

5 MR. STAFFORD: That is totally
6 unsupported by the autopsy. I object to that
7 statement by the prosecutor.

8 THE COURT: Overruled.

9 MS. DAVIES: Picture is right here.
10 Blood on the knife. You heard it from Jim
11 Bolding.

12 THE COURT: Two minutes, please.

13 MS. DAVIES: Intent? When he went in
14 that kitchen and got these last two knives.
15 Bolding, maybe McDonald, I know Bolding and
16 Hoffmaster both told you, because of the pattern
17 of the blood spatters and the footprints, you
18 know this was a person who was not rushing,
19 moving slow still. He has time to think. What
20 is he going to do? That is when he decides to
21 go back with these two knives and be sure they
22 are dead.

23 He takes the keys to the car. He was
24 smart enough to leave the credit cards and leave
25 the I. D. in the wallet. That is how you get

1 caught when you take things like that. The cash
2 you can take out of the wallet and walk out
3 with. He takes the keys because the temptation
4 is really, hey, it would be good to have wheels;
5 wouldn't it? He doesn't have wheels. You know
6 that. And he needs them. But, you know, he
7 changes his mind. He goes down that drive and
8 he realizes he is leaving footprints. And being
9 caught in the car that you stole from a house
10 where you just killed two people is another darn
11 good way to get caught. He is smart enough to
12 know that. So he throws away the keys. He goes
13 in the house, he kills two good men and walks
14 away into the night tracking their blood down
15 the street. He is guilty of capital murder,
16 ladies and gentlemen. There is just no other
17 verdict. It's the second one on the verdict
18 page, and I trust you to do the right thing.
19 Thank you.

20 THE COURT: Ladies and gentlemen, in a
21 moment you will retire to consider your
22 verdict.

23 First of all, as to Mr. Whitten and
24 Mr. Sheehan, do either of you have anything in
25 the jury room?

1 THE JUROR: Yes.

2 THE COURT: I want you two to go down
3 the hall at this time and retrieve that,
4 please.

5 For the remainder of you, when you
6 return to the jury room, I am going to suggest
7 that your first order of business be to elect a
8 foreman as we used to call them or as we now
9 call it presiding juror.

10 Regarding the evidence, there are many
11 items of evidence, most are in consecutive
12 order, not all items numbered were admitted into
13 evidence. If you wish to have all the evidence,
14 you may get it. I want the foreman or
15 foreperson or presiding juror to write a note
16 telling me what you want if you want any of the
17 evidence. Or if it's easier, since there are so
18 many items and some are large items, tell me
19 what it is you don't want. Either way you want
20 it. At this time, would you, please, go with
21 the bailiff back to the jury room.

22 (Jury retires to deliberate at 9:50
23 p.m.).

24 (Verdict at 12:15)

25 THE COURT: Ladies and gentlemen, have

1 you reached a verdict?

2 THE FOREMAN: We have, Your Honor.

3 THE COURT: Mr. Harvill, are you the
4 foreman?

5 THE FOREMAN: Yes, sir.

6 THE COURT: Pass it to the bailiff,
7 please, sir.

8 Please stand up, Mr. Rhoades.

9 Case styled State of Texas vs. Rick
10 Allan Rhoades. Cause number 612408. We, the
11 jury, find the defendant, Rick Allen Rhoades,
12 guilty of capital murder as charged in the
13 indictment. Signed by Dale Harvill, presiding
14 juror.

15 So say you all, ladies and gentlemen?

16 THE JURORS: Yes.

17 THE COURT: Do you wish them polled?

18 MR. STAFFORD: No, Your Honor.

19 THE COURT: Please be seated.

20 I will give you a couple of options
21 for tomorrow. We are pretty much agreed it's
22 okay with us if you come in about 12:30 tomorrow
23 afternoon. Does anybody have a particular
24 problem with that? No.

25 I anticipate you are going to hear

1 from several witnesses tomorrow for the State.
2 And then we will break until Monday morning.
3 You will not be held over. And allow the State
4 to continue their case beginning Monday morning
5 and continuing straight through at that time.

6 Anybody have any special problems you
7 want to bring to my attention at this point?

8 All the previous admonitions are still
9 in effect. You do not have to stay with us
10 overnight. We will see that a bailiff goes with
11 you to your cars. I understand they are all
12 grouped in one location.

13 Mr. Garcia, you don't have
14 transportation?

15 THE JUROR: I will find a ride.

16 THE COURT: Is there somebody
17 available to come get you at this hour?

18 THE JUROR: I will get a cab.

19 THE COURT: Why don't you stay and
20 talk with the bailiff when I release you in just
21 a moment before everybody goes down.

22 As I said before, all the previous
23 admonitions are in effect. Don't discuss this
24 case among yourselves or with anybody else. We
25 are going to ask that you be back tomorrow

1 afternoon at 12:30. Again assemble in the
2 hallway just like you have been doing. Don't
3 make any kind of independent investigation. I
4 know that some members of the media have been in
5 and out throughout the evening and have been
6 calling in, so there may be something in the
7 papers or on the radio or television. Again,
8 don't pay any attention to it, change the
9 channel, turn it down, change the station, set
10 the newspaper aside.

11 Any requested admonitions from the
12 defense?

13 MR. STAFFORD: No.

14 THE COURT: The State?

15 MS. DAVIES: Nothing more.

16 THE COURT: If you would, please, all
17 in a group go back to the jury room. Mr.
18 Garcia, please talk to the bailiff on your way
19 back. We will take you down in a group. 12:30
20 tomorrow afternoon.

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